TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 261

S. A. TAYLOR, PETITIONER,

vs.

HENRY STERNBERG, TRUSTEE IN BANKRUPTCY FOR PARKS DRY GOODS COMPANY, BANKRUPT

No. 262

JOHN R. DUTY, PETITIONER,

vs.

HENRY STERNBERG, TRUSTEE IN BANKRUPTCY FOR PARKS DRY GOODS COMPANY, BANKRUPT

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 6, 1934.

CERTIORARI GRANTED OCTOBER 8, 1934.

SUPREME COURT OF THE UNITED STATES

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[fol. 2] [Caption omitted]

[fol. 3] **IN UNITED STATES DISTRICT COURT, DISTRICT OF ARKANSAS**

In Bankruptcy

In the Matter of PARKS DRY GOODS COMPANY, Bankrupt

No. —

PETITION FOR SUMMARY ORDER TO TURN OVER ASSETS

To the Hon. A. A. McDonald, Referee in Bankruptcy:

The petition of Henry Sternberg, trustee in bankruptcy of the Parks Dry Goods Company, respectfully shows:

That on January 10, 1931, the Chancery Court of Benton County, Arkansas, entered upon its records an order appointing one Sidney A. Taylor as receiver for the Parks Dry Goods Company, bankrupt herein, and that the said Sidney A. Taylor immediately filed his bond and took possession of all of the assets and property of the bankrupt. That said order was wholly void and that the said Sidney A. Taylor had no lawful right to the possession of said assets and had no lawful right to dispose of the same or any part thereof by virtue of said appointment for the following reasons:

(a) That the said Benton Chancery Court had no jurisdiction of the subject matter of said action for the reason that the same were insolvency proceedings for the winding up of the said bankrupt corporation and that sole and exclusive jurisdiction in said matter is ledged by the constitution of the United States and by various Acts of Congress relating

to bankruptcy now in force in the United States District Court for the Western District of Arkansas.

(b) That the said Chancery Court acquired and had no jurisdiction over the Parks Dry Goods Company as a party to said action because no summons or other process was served on said Parks Dry Goods Company notifying said bankrupt of the pendency of said action, as required by the laws of Arkansas.

(c) Because the complaint and application for appointment of a receiver on its face is insufficient to confer jurisdiction on the court in that no substantive relief is sought in [fol. 4] said action and that the sole purpose of the filing of said complaint was to hinder and delay the creditors of the bankrupt in the collection of their just demands against it.

That on February 11, 1931, an involuntary petition in bankruptcy was filed in this court by certain creditors against the said bankrupt; that a subpœna was issued thereon as provided by law and that due service of said subpœna was had forthwith upon the said bankrupt. That on said February 11, 1931, the said Henry Sternberg was appointed receiver for said Parks Dry Goods Company, by this court in said bankruptcy proceedings and that the said receiver immediately went to Rogers, Arkansas, and notified Sidney A. Taylor in possession of the assets of said bankrupt as hereinbefore set out and John R. Duty, attorney for the said Sidney A. Taylor of his appointment as receiver in the premises. That thereafter on February 13, 1931, upon application of the said Sidney A. Taylor, represented by the said John R. Duty, as his attorney the Chancery Court of Benton County entered an order allowing the said Sidney A. Taylor the sum of $1500.00, as his compensation as receiver in said matter and further allowing said John R. Duty the sum of $500.00 as an attorney's fee in the premises. That said order recites on its face that bankruptcy proceedings were pending as hereinbefore set out and that a receiver had been appointed in said bankruptcy proceedings. That said order is wholly void for the following reasons:

That said court had no jurisdiction of said cause of action for the reasons hereinbefore stated; that said court had no jurisdiction of the Parks Dry Goods Company in said matter for the reasons hereinbefore stated; that any jurisdiction which might have been exercised in the premises by the

said state court had been suspended by the filing of the bankruptcy petition against the Parks Dry Goods Company, as hereinbefore alleged; that any right of possession or authority to dispose of the property of the bankrupt held or claimed by the said Sidney A. Taylor as receiver aforesaid had been suspended and terminated by the appointment of the said Henry Sternberg as receiver in bankruptcy. That all of said facts were well known to the said Sidney A. Taylor and to the said John R. Duty, but that they are retaining the said sums of $1500.00 and $500.00, respectively, and refusing to deliver the same to your petitioner and claiming to be entitled to the same by virtue of said order. Petitioner further shows that at the time said order was made he was constructively in possession of said fund and that the same is now retained without his consent and over his objection.

[fol. 5] Petitioner further shows that the said receivership proceedings in the state court of Benton County were not brought for the purpose of fixing any lien or claim of any nature whatsoever upon the assets of said Parks Dry Goods Company; that no person was asserting any preferential lien or claim of any nature to said assets through and by virtue of said proceedings and that no person is now asserting any right, title or interest in the property of the said bankrupt under and by virtue of said proceedings. Petitioner further says that the proceedings in said state court while utterly void as hereinbefore alleged were not beneficial to said estate and on the contrary were detrimental to the interest of said estate and resulted in wasteful and extravagant dissipation of a substantial part of said estate. That prior to the appointment of said receiver the assets of the Parks Dry Goods Company were in the hands of honest officers of said corporation and were not being wasted or dissipated.

Petitioner further shows that the said Parks Dry Goods Company was duly adjudicated a bankrupt upon the involuntary petition in bankruptcy hereinbefore referred to and that such adjudication related back to the date of filing of said petition on February 11, 1931. That thereafter such proceedings were had and done in this cause as that your petitioner was duly appointed and qualified as trustee herein and that ever since he has been and now is the duly qualified and acting trustee in bankruptcy for said estate.

Wherefore, your petitioner prays the court for an order requiring each the said Sidney A. Taylor to surrender the said sum of $1500.00 in his hands and the said John R. Duty to surrender the sum of $500.00; and meanwhile prays that a rule to show cause may be issued upon each the said Sidney A. Taylor and John R. Duty requiring each of them to appear and answer herein on or before a certain date to be fixed by the court, and for such other and further relief as may be just.

Henry Sternberg, Trustee in Bankruptcy for Parks Dry Goods Company, Bankrupt. C. R. Barry, Attorney for Trustee.

Duly sworn to by Henry Sternberg. Jurat omitted in printing.

[fol. 6] IN UNITED STATES DISTRICT COURT

[Caption omitted]

ORDER OF REFEREE TO SHOW CAUSE—June 9, 1931

Upon the annexed petition of Henry Sternberg, trustee of Parks Dry Goods Company, the above named bankrupt, duly verified the 8th day of June, 1931; upon all the papers filed and proceedings had herein; and upon motion of C. R. Barry, attorney for said trustee, at the hearing whereof no adverse interest was represented it is

Ordered that said Sidney A. Taylor and John R. Duty show cause, if any they, or either of them, have, before the undersigned referee in charge of said bankruptcy, at the referee's court room in the Federal Building, in the city of Fort Smith, in said District, on the 23rd day of June, 1931, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, why the prayer of said trustee's petition should not be granted and a summary order issued as therein prayed for directing said Sidney A. Taylor to surrender the certain sum of $1500.00 and the said John R. Duty to surrender the certain sum of $500.00 claimed in said petition to be in their possession or under their control and it is further

Ordered that service of a copy of this order to show cause personally upon each the said Sidney A. Taylor and the

said John R. Duty on or before the 12th day of June, 1931, shall be sufficient service of this order.

Dated on this 9th day of June, 1931.

A. A. McDonald, Referee in Bankruptcy.

[fol. 7] IN UNITED STATES DISTRICT COURT

[Caption omitted]

MOTION OF SIDNEY A. TAYLOR AND JOHN R. DUTY TO DISMISS PETITION FOR SUMMARY ORDER

To the Honorable A. A. McDonald, Referee in Bankruptcy:

Comes Sidney A. Taylor and John R. Duty, respondents in the petition for summary order to turn over assets heretofore filed by the trustee, and moves the court to dismiss said petition for summary order, and for grounds of this motion state:

1. That the referee and court herein have no jurisdiction to determine the matters alleged and contained in the said trustee's petition for summary order as aforesaid, and has jurisdiction to enter a turn over order in said matter alleged.

2. That it appears from said petition that the claims of these respondents to the moneys asked to be turned over as referred to in said trustee's decision is an adverse claim and must be determined a plenary suit.

3. That the referee and court have no jurisdiction to determine the merits of such claim or to order such moneys turned over under a summary petition and order.

4. That the referee in bankruptcy court has no jurisdiction to determine the matters set up in said petition because the allegations in said petition is a collateral attack upon the jurisdiction of the Chancery Court of Benton County, Arkansas, a superior state court of competent jurisdiction.

Respectfully submitted, Sidney A. Taylor and John R. Duty, Respondents, by W. N. Ivie, Their Attorney.

IN UNITED STATES DISTRICT COURT

[Caption omitted]

ORDER OF REFEREE DIRECTING TURNING OVER OF ASSETS—June 23, 1931

(This order is denominated Exhibit "B" in the Referee's Certificate on Review.)

At Fort Smith in said district and division on Tuesday, June 23, 1931, before A. A. McDonald, Referee.

This being the day appointed by the court for the hearing on the order for Sidney A. Taylor and John R. Duty to [fol. 8] show cause why they should not surrender and pay in sums of $1500.00, received by said Sidney A. Taylor as fees as receiver, and the sum of $500.00, received by John R. Duty, as attorney for said receiver in above entitled bankruptcy, comes Henry Sternberg, trustee in bankruptcy in person and by C. R. Barry, his attorney, and came Sidney A. Taylor and John R. Duty, in person and by W. N. Ivie, their attorney, and this cause being heard upon the petition of the trustee. The motion of respondent to dismiss which is their response to said petition and the record in the Benton County Chancery Court certified to by Fred Douglas, Clerk, which is agreed is all the evidence to be introduced and it being agreed that the whole matter be heard at once and the referee after hearing said evidence and argument of counsel and being well and sufficiently advised, doth find:

(1) That under the Statutes of Arkansas, and the decision of the Supreme Court of the State of Arkansas, and in case of Barker vs. Cunningham, 104 Ark. P. 627, the case of First National Bank vs. Parks Dry Goods Company, was in reality never begun as the indorsement on the summons in said transcript shows on its face "Issued but never turned over to the sheriff on instructions of plaintiff's attorney". That therefore there was no suit filed and the court had no jurisdiction and could make no order therein.

(2) That no lien was claimed by plaintiff and no relief or judgment asked against said defendant, Parks Dry Goods Company.

(3) That neither Sidney A. Taylor as receiver nor John R. Duty as attorney are adverse claimants under the law, and the referee has jurisdiction to make the order prayed for.

(4) That complaint filed can only be construed to be filed under the State Insolvency Act, and therefore the State Court had no jurisdiction as that jurisdiction is exclusive in the Courts of Bankruptcy.

(5) That the filing of said complaint, the appointment of said receiver, and the conduct of the business as shown by official report filed was not of benefit to the bankrupt estate but tended to dissipate and waste of same.

(6) That by the order of adjudication made February 13, 1931, whatever jurisdiction said state court may have had ceased and was suspended and the order made by said state court on said date was without authority and void.

[fol. 9] (7) That under the bankrupt law the constructive possession of all the assets of the bankrupt was in Henry Sternberg, the receiver appointed by the United States District on February 11, 1931.

(8) That order made by the State Court on February 13, 1931, was made with full knowledge on the part of the receiver, Sidney A. Taylor, and his attorney John R. Duty, that bankruptcy proceedings were pending in this court, and such knowledge was brought to the attention of the court before said order was made as shown by the record of said court introduced in evidence herein.

(9) That the claim of each of said respondents that they are adverse claimants to the property held by them, and therefore not subject to the summary jurisdiction of this court, is not founded upon a disputed question of facts for the reason that it is stipulated in open court that the transcript of the state court in the receivership proceedings is a full, true and correct record in said cause and that no disputed question of facts is therefore involved herein; and I further find that the controlling question of law in the case, which is the question as to the jurisdiction of the state court in the receivership case, is not a doubtful question and that no precedents or adjudicated cases exist by authority of which the respondent might claim that the state court had

jurisdiction. In my opinion the case of Finneran vs. Burton, 291 Federal 37, correctly states the law applicable to the status of each of the respondents in these proceedings and this case, having been decided by the Eighth Circuit Court of Appeals is binding on this court.

It is therefore ordered that the said Sidney A. Taylor, receiver, pay over to Henry Sternberg, Trustee for Parks Dry Goods Company, the sum of $1500.00, retained by him; that the said John R. Duty, attorney for said receiver pay over to Henry Sternberg, Trustee for Parks Dry Goods Company, the sum of $500.00, paid to him as attorney for said receiver by said Sidney A. Taylor, receiver and retained by him. That the rights of the said Sidney A. Taylor and John R. Duty, to present their claims for allowance for the services claimed to have been rendered by them as beneficial to said estate of said Parks Dry Goods Company, is hereby specially reserved to them.

A. A. McDonald, Referee in Bankruptcy.

[fol. 10] Certified Copy of Proceedings in Benton Chancery Court

(Exhibit "A" Referred to in Certificate on Review)

In Chancery Court of Benton County

Ely & Walker Dry Goods Company, a Corporation, and the First National Bank of Rogers, Arkansas, a Corporation, Plaintiffs,

vs.

Parks Dry Goods Company, a Corporation, Defendant

Complaint in Equity—Filed Jan. 9, 1931

Comes the plaintiffs and for their cause of action and complaint states that the plaintiff Ely & Walker Dry Goods Company is a corporation organized and existing under the laws of the state of Missouri with its principal place of business in the city of St. Louis; that the First National Bank of Rogers, Arkansas, is a corporation organized and existing under the laws of the United States and with its principal place of business in the city of Rogers, in said county.

Plaintiff Ely & Walker Dry Goods Company states that the defendant is indebted to it in the sum of $4,000.00 for goods and merchandise sold and delivered to the said defendant prior hereto on open account; that said account is long past due and remains unpaid.

Said First National Bank of Rogers, Arkansas, states that it is now in the hands of the comptroller of the currency of the United States and that said defendant is indebted to it in the sum of $7500.00 as evidenced by three certain promissory notes dated November 26, 1930, in the sum of $2500.00 due ninety days after date and dated November 4, 1930, in the sum of $2500.00 due six months after date and dated July 18, 1930, and due six months after date in the sum of $2500.00; true copies of said notes being hereto attached marked exhibits "A", "B" and "C" respectively, and made a part of this complaint.

Plaintiffs state that the said Parks Dry Goods Company also owes other indebtedness in excess of $15,000.00; that the said corporation is insolvent and wholly unable to pay its debts as they mature in due course; that E. F. Jackson, now deceased, was the holder of thirty per cent of the stock of said corporation; that the said E. F. Jackson was also President of said corporation and that it has no chief executive to manage or control the affairs of said corporation; that said corporation cannot liquidate under its present management in a reasonable period of time and pay [fol. 11] its creditors in full; that it is necessary to purchase merchandise to conduct the operation of said business and no merchandise house will sell merchandise to said insolvent corporation; that it is necessary that a receiver be appointed at once to take charge of said corporation and preserve its assets and liquidate its affairs; that said corporation is a dry goods business located in the city of Rogers, Arkansas, and a going concern; that it would be for the best interests of all creditors and other persons interested to conduct the operation of said merchandise business under receivership.

Wherefore, the premises being considered, plaintiffs pray that this court at once appoint a receiver to take charge of all the assets and property of said defendant corporation and operate said business under the orders and directions of this court and until such further orders and decrees are made by this court as is found proper and necessary in the premises, and that the proceeds of the

liquidation and management of said business be held by said receiver and paid out under the orders and directions of this court; and for all other relief.

Ely & Walker Dry Goods Company, First National Bank, of Rogers, Ark., by Duty & Duty, Their Attorneys.

Duly sworn to by John R. Duty. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 12] Summons In Chancery Court

(Issued but never turned over to the Sheriff on instructions of Plaintiff's attorney.)

The State of Arkansas to the Sheriff of Benton County, Greeting:

You are hereby commanded to summon Parks Dry Goods Company to answer in twenty days after the service of this summons upon it a complaint of equity filed against it in the Benton Chancery Court by Ely Walker Dry Goods Company, et al., and warn it that upon its failure to answer, the complaint will be taken for confessed; and you will make due return of this summons within twenty days after the date of service had.

Witness my hand and the seal of said court this 9th day of January, 1931.

Fred Douglas, Clerk.

EXHIBIT A TO COMPLAINT

No. 57039

Rogers, Ark., Nov. 26, 1930.

Ninety days after date, we, or either of us, promise to pay to the order of The First National Bank of Rogers, Rogers, Ark., twenty-five hundred Dollars, for value received, negotiable and payable at The First National Bank

of Rogers, Rogers, Ark., without defalcation or discount, and with interest from date at the rate of 8 per cent per annum until paid, payable annually, and if interest be not paid annually, to become principal and bear the same rate of interest. The drawers and endorsers severally waive presentation for payment, protest and non-payment of this note. We, the endorsers and sureties, hereby grant to any holder of this note the right to grant extensions without notifying us, or either of us, hereby ratifying such extensions and remaining bound on this note as if no extension had been obtained.

Parks D. G. Co., by E. F. Jackson, Pres.

Due 2/26/1931.
Postoffice City.
$2500.00.

[fol. 13] EXHIBIT B TO COMPLAINT

No. 56971

Rogers, Ark., Nov. 14, 1930.

Six months after date, we, or either of us, promise to pay to the order of the First National Bank of Rogers, Rogers, Ark., twenty-five hundred dollars, for value received, negotiable and payable at the First National Bank of Rogers, Rogers, Ark., without defalcation or discount, and with interest from date at the rate of 8 per cent per annum until paid, payable annually, and if interest be not paid annually, to become principal and bear the same rate of interest. The drawers and endorsers severally waive presentation for payment, protest and non-payment of this note. We, the endorsers and sureties, hereby grant to any holder of this note the right to grant extensions without notifying us, or either of us, hereby ratifying such extensions and remaining bound on this note as if no extension had been obtained.

Parks D. G. Co., by W. C. Putman.

Due 5/14/31.
Postoffice City.
$2500.00.

EXHIBIT C TO COMPLAINT

No. 56382

Rogers, Ark., July 18, 1930.

Six months after date, we, or either of us, promise to pay to the order of The First National Bank of Rogers, Rogers, Ark., two thousand five hundred dollars, for value received, negotiable and payable at The First National Bank of Rogers, Rogers, Ark., without defalcation or discount, and with interest from date at the rate of 8 per cent per annum until paid, payable annually, and if interest be not paid annually, to become principal and bear the same rate of interest. The drawers and endorsers severally waive presentation for payment, protest and non-payment of this note. We, the endorsers and sureties, hereby grant to any holder of this note the right to grant extensions without notifying us, or either of us, hereby ratifying such extensions and remaining bound on this note as if no extension had been obtained.

Parks D. G. Co., by W. C. Putman.

Due 1/18/31.
Postoffice City.
$2500.00.

[fol. 14] IN CHANCERY COURT OF BENTON COUNTY, ARKANSAS

ELY & WALKER DRY GOODS COMPANY, a Corporation and FIRST NATIONAL BANK OF ROGERS, ARKANSAS, a Corporation, Plaintiffs,

vs.

PARKS DRY GOODS COMPANY, a Corporation, Defendant

ORDER APPOINTING RECEIVER—Filed Jan. 10, 1931

Now on this 10th day of January, 1931, comes on for hearing the application of the plaintiffs herein for receiver in this cause and the court being well and sufficiently advised in the premises finds that a receiver is necessary, and it is ordered that Sidney A. Taylor be and he is hereby appointed receiver of said corporation together with all of its assets of every kind, nature or character and he will

upon filing the oath as required by law and a bond in the sum of $10,000.00 enter upon his duties as such receiver, and it is ordered that he take charge of all assets, books, records, bills receivable, notes, bonds, choses in action and every kind and nature of assets belonging to said corporation and carefully preserve same and operate the business of said corporation under the orders and directions of this court and until the further orders of this court, and that all officers, agents, attorneys and employees of said corporation are directed to turn over to said receiver all assets of said corporation, books, records, papers and every other thing belonging to said corporation, and all persons, firms, corporations or others are enjoined from in any wise interfering with said receivership.

OATH OF RECEIVER

(Title of Court and Cause Omitted)

I, Sidney A. Taylor, do solemnly swear that I will well and faithfully discharge the duties of receiver of the above named corporation, to which position I have this day been appointed by the above named court, and will carefully preserve and administer the assets of said corporation and will faithfully report to and account to said court for all funds or monies coming into my hands as such receiver, and otherwise discharge the duties thereof.

Sidney A. Taylor.

Subscribed and sworn to before me this 10th day of January, 1931. Ollie Collins, Notary Public. My commission expires June 18, 1933. (L. S.)

[File endorsement omitted.]

[fols. 15-17] IN CHANCERY COURT OF BENTON COUNTY

BOND OF RECEIVER—Filed Jan. 12, 1931

We, the undersigned acknowledge ourselves to owe and be indebted unto the State of Arkansas for the benefit of

all parties at interest, in the sum of Ten Thousand Dollars ($10,000) for the payment whereof we hereby bind ourselves, our heirs, executors, administrators and successors jointly and severally firmly by these presents, conditioned, however, that if Sidney A. Taylor who has been duly appointed as receiver by the Chancery Court of Benton County, Arkansas, in this cause therein pending shall faithfully discharge the duties encumbent upon him as such receiver, and shall faithfully account for and pay into court at such times as the court or law may prescribe or according to the orders of the court all monies or assets which shall come into his hands as such receiver and shall well and faithfully administer the trust imposed upon him, then this obligation shall become null and void, otherwise it shall remain in full force and effect.

In Testimony Whereof, we have hereunto set our hands and the seal of the corporation signing this bond, on this 10th day of January, 1931.

Sidney A. Taylor, Fidelity & Deposit Company of Maryland, by H. H. Miller, Agent and Attorney-in-Fact; by John R. Duty, Attorney-in-Fact.

Approved:

Lee Seamster, Judge of the Benton Chancery Court.

Power of Attorney, etc., omitted in printing.

[fol. 18] IN BENTON CHANCERY COURT

ELY & WALKER DRY GOODS COMPANY, a Corporation, and the FIRST NATIONAL BANK OF ROGERS, ARKANSAS, a Corporation, Plaintiffs,

vs.

PARKS DRY GOODS COMPANY, a Corporation, Defendant

ORDER DISMISSING CAUSE AS TO ELY-WALKER DRY GOODS CO.

Cause dismissed as to Ely-Walker Dry Goods Co. 1/29/31.

Fred Douglas, Clerk.

IN BENTON CHANCERY COURT

PETITION FOR APPROVAL OF SALE—Filed Jan. 30, 1931

Comes S. A. Taylor, Receiver, heretofore appointed in this cause, and states to the court that he has entered into a contract subject to the approval of this court whereby he sells and agrees to deliver forty-nine shares of the par value stock of one hundred Dollars each in the Fashion Clothing Company of Rogers, Arkansas, a corporation, to Earl Harris of Rogers, Arkansas, at and for the sum of Two Thousand Dollars.

Your said receiver states that he found said stock among the assets of the Parks Dry Goods Company; that he has had a careful inventory made and appraisal of the assets of said corporation and has made a careful inventory and appraisal of merchandise and other property of the said Fashion Clothing Company; that in the opinion of your said receiver said sum of two thousand dollars is a fair value for said shares of stock; that the actual book value is $2,900.00, but that said book value is made up of a considerable and large amount of merchandise, which is subject to great depreciation, and also accounts receivable, which are also subject to great depreciation; that said stock of the said Parks Dry Goods Company is of no value as a going concern; that the said Fashion Clothing Company has not paid any dividends thereon and is not likely to pay any dividends thereon, and that same should be sold, and that said receiver has made a diligent effort to procure a better offer on said stock but has failed to receive any such. Copy of said contract entered into by said purchaser being hereto attached and made a part hereof.

[fol. 19] Wherefore your receiver prays that this court enter an order approving said sale.

S. A. Taylor.

Subscribed and sworn to before me, a Notary Public, this 30th day of January, 1931. G. I. Howard, Notary Public. My commission expires July 30, 1932. (L. S.)

Contract and Agreement by and between S. A. Taylor, Receiver of the Parks Dry Goods Company, Rogers, Arkan-

sas, party of the first part, and Earl Harris, party of the second part, witnesseth:

That for and in consideration of the sum of two thousand ($2,000.00) Dollars, party of the first part does sell, subject to the approval of the Chancery Court of Benton County, Arkansas, and the Judge thereof in vacation, one certain certificate of stock belonging to the Parks Dry Goods Company, being No. 4, for forty-nine (49) shares of the par value of one hundred ($100.00) dollars each in the Fashion Clothing Company, a corporation, of Rogers, Arkansas, and agrees to transfer and deliver said certificate of stock to the said party of the second part, the purchaser herein, upon approval of said sale as above set forth, and the payment of the purchase price thereof, and the said party of the second part agrees to purchase said stock upon the terms and conditions as herein set forth.

Witness our hands this 30th day of January, 1931.

S. A. Taylor, Receiver Parks Dry Goods Company, Party of the First Part. Earl Harris, Party of the Second Part.

[File endorsement omitted.]

In Benton Chancery Court

First National Bank of Rogers, Arkansas, Plaintiff,

vs.

Parks Dry Goods Company, a Corporation, Defendant

Order Approving Sale

Now on this day is presented to the undersigned Chancellor of the Thirteenth Chancery District of Arkansas, the [fol. 20] petition of S. A. Taylor for an order approving the sale of forty-nine (49) shares of the par value of stock of the Fashion Clothing Company of Rogers, Arkansas, now owned and among the assets of the Parks Dry Goods Company, and it being found that Earl Harris of Rogers, Arkansas, has offered the sum of two thousand dollars in cash for said stock, subject to the approval of this court, and that said sale is recommended in a properly and duly verified petition by the receiver herein, and it being found

that it would be to the advantage of the estate of the said Parks Dry Goods Company to sell said stock at and for said sum,

It is therefore considered, ordered and adjudged that said sale be and the same is in all things hereby confirmed and approved, and that said receiver is directed to endorse said stock and deliver the same to the said Earl Harris upon payment of the purchase price to said receiver.

Witness my hand this 31st day of January, 1931.

Lee Seamster, Chancellor, Thirteenth District of Arkansas.

IN BENTON COUNTY CHANCERY COURT

FIRST NATIONAL BANK, ROGERS, ARKANSAS, Plaintiff,

vs.

PARKS DRY GOODS COMPANY, a Corporation, Defendant

PRELIMINARY PARTIAL REPORT OF RECEIVER—Filed Feb. 3, 1931

Sidney A. Taylor, the duly appointed, qualified and acting receiver herein, respectfully represents to the court that heretofore, upon to-wit, the 10th day of January, 1931, by order of this court, he was duly appointed receiver of the estate and effects of the Parks Dry Goods Company, a corporation, the above named defendant, and he does hereby make and tender this his preliminary and partial report of his activities as such receiver and the present status of the estate as follows:

1

Preliminary

The order appointing your receiver directed that he qualify by filing in this court a bond in the sum of $10,000 with surety to be approved by judge or clerk of the court on condition that he faithfully perform his duties as such receiver; that pursuant to said order, your receiver did, file herein his bond in said sum of $10,000.00 which said bond was duly approved.

[fol. 21] Said order of appointment directed your receiver to take charge of all of the property, assets and rights of defendant; that it was further ordered that your receiver file an inventory of the property coming into his possession as such receiver and that he forthwith open books of account and cause to be kept therein due and proper account of the earnings and expenses, receipts and disbursements in said estate; that in compliance therewith, your receiver did in conjunction with appraisers, prepare such an inventory and appraisement, which the receiver herewith files as a part of this report (Exhibit A); that the taking and organizing of said inventory and appraisement required a very substantial amount of the time of your receiver and of said appraisers; that the work of organizing and listing the results of said work was done largely by Mr. L. M. Riggs, Mr. W. E. Ivie and by your receiver; that Mr. L. M. Riggs and Mr. W. E. Ivie have spent approximately seventy-two hours in this connection.

The aforesaid order authorized and directed your receiver to continue the operation of the business of defendant, discharge and fix the compensation of officers and employees, to collect incomes, outstanding or accrued accounts, and to hold and apply the same under the order of this court.

Taking Charge

Immediately upon the appointment and qualification of your receiver he did take possession of the estate and effects of defendant and doing so, he found the same to consist of a going concern then in full operation engaged in the general dry goods retail business, in the city of Rogers, State of Arkansas; that at the time of the appointment of your receiver, the location of the store operated by defendant company was as follows:

108 West Walnut, Rogers, Arkansas.

Your receiver immediately set about reviewing the condition and past history of said store; that his investigation disclosed that the operation of said store had resulted in considerable loss.

That as nearly as your receiver was able to determine, the losses in the above mentioned store was due to very high overhead expense, poor judgment in merchandising

goods, strong competition and in the opinion of your receiver of the defendant company, it would require a considerable length of time to work said store up to profitable basis; that the gross profit is not sufficient to cover the overhead and cost of financing.

[fol. 22] Your receiver engaged McDuffie, Stewart and Company of Little Rock, Arkansas, accountants and auditors, to make an examination of the accounts of defendant. It was found desirable to make said examination as of January 10, 1931; that said accountants have completed their examination and have made their written report to your receiver as of that date (Exhibit "B").

That upon his appointment, your receiver examined the insurance carried by defendant and did at once arrange for the transfer and modification of such policies as were held so as to protect the interests of your receiver.

Assets on Hand at Time of Appointment of Receiver

		Appraised value
Cash on hand	$1,052.10	$1,052.10
Accounts and note receivable	2,263.27	3,263.27
Merchandise Inventory	20,024.24	10,813.36
Equity in Land and store bldg.		1,000.00
Furniture and fixtures	2,530.00	1,499.00
49 Shares of stock in the Fashion Clothing Company, Rogers	2,906.68	1,750.00
Total	$ 29,776.29	$ 19,377.73

Operations

Deficit

Your receiver has carefully investigated and analyzed the operations of the defendant's business for the last five years; these operations have resulted in considerable loss, and your receiver is of the opinion that the discontinuance of the operation of defendant company and disposal of its assets in bulk by public or private sale is advisable in order to protect the interests of the creditors.

Claims

Your receiver is of the opinion that creditors should file their claims forthwith in order to determine exactly the

total amount of indebtedness of the defendant company. The indebtedness of the defendant company to trade creditors and note holders as shown in the auditor's report is as follows:

General Trade Creditors	$10,508.19

[fol. 23] Note Holders:

J. H. Buttram, Bestwater, Ark.	$2,500.00	verified
Mrs. J. E. Walk, Rogers, Ark.	400.00	"
Virginia Jackson, " "	1,000.00	"
Chas. Dixon, " "	800.00	"
Mrs. Mattie Easley, " "	1,500.00	"
J. D. Scott, Bestwater, "	400.00	"
Geo. Farabough, Rogers, Ark.	3,000.00	"
Ruth Osborn, " "	1,500.00	"
Mrs. W. C. Putman, " "	1,500.00	"
Total	12,600.00	

In addition to the notes shown above and acknowledged by Mr. W. C. Putman, the former manager, your receiver has been advised of other notes payable by this company, but as he was unable to identify the proceeds of these notes coming into the business, or find satisfactory evidence of their acknowledgment by interest payment or otherwise, your receiver is not considering them in his present summary, leaving them for submission to the court.

Recommendations

Your receiver now respectfully makes the following recommendations:

1. That your receiver be authorized to sell the assets of the defendant company in bulk by public or private sale.

2. That your receiver be authorized to inform all creditors that claims should be filed not later than February 20th, and that no claims be received after that date.

3. That your receiver be authorized to pay all expenses incurred in the preparation and compilation of the inventory and its appraisal.

4. That the foregoing preliminary and partial report of your receiver be examined by the court and approved.

Respectfully submitted this the 3rd day of February, 1931. S. A. Taylor, Receiver. John R. Duty, Attorney for Receiver.

Duly sworn to by Sidney A. Taylor. Jurat omitted in printing.

[fol. 24] [File endorsement omitted.]

IN THE BENTON CHANCERY COURT

FIRST NATIONAL BANK OF ROGERS, et al., Plaintiff,

VS.

PARKS DRY GOODS COMPANY, a Corporation, Defendant

ORDER APPROVING SALE OF ASSETS OF PARKS DRY GOODS COMPANY

Now on this 5th day of February, 1931, is presented to the undersigned as Chancellor of the Thirteenth District of the State of Arkansas the petition of Sidney A. Taylor as receiver of the defendant corporation herein for order of sale of all of the assets of said defendant corporation, and it being found that it is proper that said order be made, and that such sale will be for the best interests of all creditors and other interested parties in this cause,

It is therefore ordered and adjudged that said receiver, Sidney A. Taylor, be and he is hereby authorized and directed to sell subject to the approval of the Chancery Court of Benton County, Arkansas, or to the undersigned Chancellor in vacation, all of the assets of every kind, nature or description of the said Parks Dry Goods Company either at private or public sale, and that any contract of sale entered into shall be subject to the approval of the Benton Chancery Court, or to the undersigned as Chancellor thereof, and that a copy of this order be mailed by said receiver to all creditors of said corporation at once.

It is further ordered that all creditors of said corporation shall file with said receiver a duly verified statement or claim on or before the first day of March, 1931, or that said creditors shall be barred.

[fol. 25] Witness my hand as Chancellor of the Thirteenth Chancery District of Arkansas, on this 5th day of February, 1931, at Chambers in Bentonville, Arkansas.

Lee Seamster, Chancellor of the Thirteenth Chancery District of Arkansas.

IN BENTON COUNTY CHANCERY COURT

FIRST NATIONAL BANK, ROGERS, ARKANSAS, Plaintiff,

vs.

PARKS DRY GOODS COMPANY, a corporation, Defendant

FINAL REPORT OF RECEIVER—Filed Feb. 13, 1931

Sidney A. Taylor, the duly appointed, qualified and acting receiver, herein, respectfully represents to the court that heretofore, upon to-wit, the 10th day of January, 1931, by order of this court, he was duly appointed receiver of the estate and effects of the Parks Dry Goods Company, a corporation, the above named defendant, and he does hereby make and tender this his final report of his activities as such receiver and the present status of the estate as follows:

I

Sale of Assets

Your receiver wishes to report that according to an order by the court he has disposed of forty-nine shares of stock in the Fashion Clothing Company for the total sum of $2000.00. Your receiver also wishes to inform this court that the proceeds of sale of merchandise in the usual course of business and collections on accounts receivable, up to and including the 11th day of February, 1931, amount to $1637.99.

II

Statement of Receipts and Disbursements

Cash on hand in bank on January 10, 1931	$1052.10
Proceeds of sale of 49 shares of stock in the Fashion Clothing Company	2000.00

Proceeds of sale of merchandise in the usual course of business and collections on accounts receivable	1637.99
Total	$4690.09

[fol. 26] Disbursements:

Store salaries	347.51
Inventory Expense	134.00
Improvement to Real Estate	67.50
General Expense	75.29
	$ 624.30
Cash on hand and in bank	4,056.79

IV

Suits

Your receiver wishes to report that a petition in bankruptcy has been filed against the defendant corporation, the Parks Dry Goods Company, and the defendant has consented to bankruptcy and that adjudication will be made immediately.

Your receiver also wishes to report that a receiver has been appointed in the Federal Court by order of the United States District Court for the Western District of Arkansas.

Wherefore, the premises considered your receiver prays:

1. That this court by an order entered of record herein approve this report and that your receiver be authorized and directed:

2. To pay the court costs herein.

3. To pay all unpaid expenses of administration as may arise in the closing up of this receivership estate.

4. To pay such amount to the undersigned as receiver as may be determined by this court for services rendered by the receiver herein.

5. To pay such amount to Duty and Duty as attorneys for the plaintiff herein, and also to Mr. John R. Duty as attorney for the receiver herein, as may be determined as a reasonable amount, same to be in full of any and all legal services as said attorneys.

6. To pay McDuffie, Stewart & Company, Accountants, the sum of $300.00 for the preparation and compilation of an audit.

7. To pay L. M. Riggs the sum of $125.00 for services rendered to your receiver in the preparation, compilation and appraisal of inventory.

[fol. 27] 8. To turn over and deliver all the cash on hand, after payment of the above, to the receiver appointed by the United States District Court for the Fort Smith Division of the Western District of Arkansas.

9. Thereupon to stand discharged as Receiver herein and this receivership to be terminated and closed; and

10. For such other orders and decrees as in the premises may be proper.

S. A. Taylor, Receiver. John R. Duty, Attorney for Receiver.

Duly sworn to by Sidney A. Taylor. Jurat omitted in printing.

[File endorsement omitted.]

IN BENTON COUNTY CHANCERY COURT

#5663

FIRST NATIONAL BANK, ROGERS, ARKANSAS, Plaintiff,

vs.

PARKS DRY GOODS COMPANY, a Corporation, Defendant

DECREE AND ORDER

Now on this 13th day of February, 1931, the same being the day of the regular January-February adjourned term of court and comes on for hearing the final report of the receiver herein, and it being found that a petition in bankruptcy has been filed in the District Court of the United States for the Western District of Arkansas, and of the Fort Smith Division thereof and that adjudication has

[fol. 28] either been made or will shortly be made before the sitting of this court on any other future date and that the receiver should be discharged and the state receivership wound up; that the merchandise store of the defendant has now been closed by order of the bankrupt court and the court finds that said receiver operated the business of the defendant during his receivership and that Duty and Duty filed the petition herein for the appointment of a receiver and has represented said receiver as attorneys in the administration of the affairs of said defendant.

It is therefore considered, ordered, and decreed that said final report of receiver is thereby in all things approved; that this receiver be directed:

1. To pay the court costs herein.

2. To pay all unpaid expenses of administration as may arise in the closing up of the receivership estate.

3. To pay said receiver the sum of $1500.00, which is hereby allowed as receivership fees.

4. To pay to Duty and Duty and John R. Duty, as attorneys for the plaintiff herein and attorney for the receiver herein, the sum of $500.00, which is hereby allowed.

5. To pay McDuffie, Stewart & Company, accountants, the sum of $300.00 for the preparation and compilation of an audit made.

6. To pay to L. M. Riggs the sum of $125.00 for services rendered to the receiver for the preparation, compilation and appraisal of inventory.

7. It is further ordered that said receiver be directed to pay the salaries of the employees of the Parks Dry Goods Company up to and including the 15th day of February, 1931.

8. After said sums are paid to turn over all cash on hand to the receiver or trustee appointed by the United States District Court in bankruptcy; and

9. That said receiver thereafter shall be discharged and said receivership be terminated and closed and his bond fully discharged and exonerated.

STATE OF ARKANSAS,
County of Benton, ss:

I, Fred Douglas, Clerk of the Chancery Court of Benton County, Arkansas, do hereby certify that the foregoing 31 [fol. 29] pages of typewriting contain a true and correct transcript of all the pleadings, exhibits, reports of receiver, orders of the court and copy of process issued.

The transcript is complete in detail except for the inventory and appraisement, and the report of McDuffie-Stewart and Company, auditors.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 9th day of May, 1931.

Fred Douglas, Clerk of the Chancery Court, Benton County, Arkansas. (Seal.)

(Filed and made a part of record in hearing herein by consent of attorneys for trustee and respondents this 23rd day of June 1931, 10 A. M. A. A. McDonald, Referee.) Exhibit "A".

IN UNITED STATES DISTRICT COURT

[Caption omitted]

PETITION OF SIDNEY A. TAYLOR AND JOHN R. DUTY FOR REVIEW—Filed with Referee July 7, 1931

Petitioners or respondents to a petition of the trustee in the above matter and as such were parties to certain proceedings in said bankrupt opinion before A. A. McDonald, Esquire, as the Referee in bankruptcy in charge thereof, to-wit:

A summary petition filed by the trustee against these petitioners praying for a summary order requiring petitioner Taylor, as receiver in the state court to pay to the trustee the sum of $1500.00 allowed and retained by him as such receiver, and from petitioner John R. Duty, as attorney for said receiver, to pay to said trustee the sum of $500.00 paid him as attorney for such receiver in said state court, and the joint motion of these petitioners to dismiss said summary petition of the trustee for the reason that they were adverse claimants and that the referee had no summary jurisdiction, etc.

Upon the hearing thereof a final order was made by said referee as follows, to-wit:

"It is therefore ordered that the said Sidney A. Taylor, receiver, pay over to Henry Sternberg, trustee for Parks Dry Goods Company, the sum of $1500.00, retained by him; that the said John R. Duty, attorney for said receiver, pay [fol. 30] over to Henry Sternberg, trustee for Parks Dry Goods Company, the sum of $500.00, paid to him as attorney for said receiver by said Sidney A. Taylor, receiver, and retained by him. That the rights of the said Sidney A. Taylor and John R. Duty, to present their claims for allowance for the services claimed to have been rendered by them as beneficial to said estate of said Parks Dry Goods Company, is hereby specially reserved to them."

To which order and to each finding of fact and conclusion of law of said referee upon which said order was based these petitioners duly excepted.

Said findings of fact and conclusion of law and said order is erroneous in this, that the referee erred in finding

1. That under the statute of Arkansas and the decision of the Supreme Court of Arkansas, in the case of Barker vs. Cunningham, 105 Ark. 627, that the case in Benton Chancery Court against Parks Dry Goods Company was in reality never begun. That there was no suit filed and the court had no jurisdiction and could make no order therein. That this finding was erroneous as shown from the docket entries made in said case in said Benton Chancery Court, a certified copy of said entries being hereto attached and marked Exhibit "A" and made part of this petition.

2. That the referee erred in finding that neither of these petitioners were adverse claimants under the law, and in holding that the referee has jurisdiction to make the order prayed for.

3. That the referee erred, in holding that the complaint filed in the state court could only be construed to be filed under the state Insolvency Act, and that therefore the state court had no jurisdiction.

4. That the referee erred in holding that said complaint and the appointment of the receiver and the conduct of the

business in the state court was not of benefit to bankrupt estate but tended to dissipate and waste same.

5. That the referee erred in holding that the state court was without authority to make the order allowing the fee of petitioners on February 13, 1931.

6. That the referee erred in holding that the claim of each of these petitioners was not adverse, and was therefore not subject to the summary jurisdiction of said bankruptcy court, and the referee erred in finding that it was stipulated in open court that the transcript of the state court was full, [fol. 31] true and correct record in said cause, and in finding that there was no disputed questions of fact.

7. That the referee erred in holding that the case of Finneran vs. Burton 291 Fed. 37 correctly states the law applicable to the status of each of these petitioners in this proceeding, as said Burton case is not in point and was on an entirely different question from the one raised in the instant case. There was no question of adverse claim or of summary jurisdiction in the Burton case, but to the contrary in said Burton case the claim of the receiver in the state court was filed in the bankruptcy court and the question arose over the legality of the allowance of such claim.

8. The referee erred in ordering the said petitioner Sidney A. Taylor, as receiver, to pay over to Henry Sternberg, trustee for the Parks Dry Goods Company, the sum of $1500.00, and erred in ordering that the said John R. Duty, attorney for said receiver, pay to said trustee the sum of $500.00 which has been paid to him as attorney for such receiver.

Wherefore, petitioners pray that said findings and order be reviewed and reversed and that they, and each of them, be restored to all things they, or either of them, have lost by reason of said errors.

Sidney A. Taylor, John R. Duty, Petitioners.

[File endorsement omitted.]

EXHIBIT A TO PETITION FOR REVIEW

Docket Entries

Chancery Court Docket No. 5663, January Term, 1931

ELY-WALKER DRY GOODS., et al., Plaintiff,

vs.

PARKS DRY GOODS COMPANY, Defendant

3rd day. Appearance of defendants filed. Application for appointment of receiver granted and S. A. Taylor is appointed receiver and is directed to take the oath and make bond in the sum of $10,000.00, take charge of the assets, file inventory and operate the business until further orders of the court.

[fol. 32] 4th day. Bond of receiver is approved by the court in the sum of $10,000.00 with the Fidelity and Deposit Company of Maryland as surety. The receiver is directed to secure the services of the present management of the store in making the inventory and to operate the store with the present employees as far as possible consistent with good business methods.

In vacation, Jan. 29, 1931.

Cause dismissed as to Ely-Walker Dry Goods Co.

7th day. Final report of receiver filed, report approved and allowances made as follows: Auditors, $300.00: L. M. Riggs, Appraisal, $125.00: Receiver's fee $1500.00: and John R. Duty, Atty. fee of $500.00. Pay to employees in store one-half month salary and deliver balance of cash to Henry Sternberg, Receiver in Bankruptcy Court, and the receiver together with his bondsmen are discharged from further liability herein.

STATE OF ARKANSAS,
County of Benton, ss:

I, Fred Douglas, Clerk of the Chancery Court of Benton County, Arkansas, do hereby certify that the above and foregoing is a true and correct copy of all docket entries appearing on the court's docket in the cause above styled, as the same appears in the file of disposed-of cases in the Chancery Court, on file in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court this 29th day of June, 1931.

Fred Douglas, Clerk of the Chancery Court, Benton County, Arkansas. (Seal.)

IN UNITED STATES DISTRICT COURT

[Caption omitted]

REFEREE'S CERTIFICATE ON REVIEW—Dated July 8, 1931

I, A. A. McDonald, one of the referees of said court in bankruptcy do hereby certify that in the course of the proceedings in said cause before me, the following question arose pertinent to the said proceedings:

Whether the referee had the authority and power to make a summary order requiring S. A. Taylor as receiver for said Park Dry Goods Company and John R. Duty as his attor-
[fol. 33] ney to pay to the trustee herein certain sums of money retained and received by them from the estate of said bankrupt.

The only evidence introduced or offered was the certified copy of the record of the papers and proceedings in the Chancery Court of Benton County certified to by Fred Douglas, Clerk and which is attached hereto and made a part hereof and marked exhibit "A". The referee found after hearing said evidence and argument of counsel that he had such authority and made certain findings a copy of which is attached hereto and made a part hereof and marked exhibit "B".

That the said S. A. Taylor and John R. Duty having filed their petition for review of said decision, to which is attached a copy of certain court orders which was not presented to the referee at said hearing and is no part of this record.

The said question is certified to the judge for his opinion thereon.

Dated at Fort Smith, Arkansas, this 8th day of July, 1931.

A. A. McDonald, Referee in Bankruptcy.

IN UNITED STATES DISTRICT COURT

[Caption omitted]

PETITION OF SIDNEY A. TAYLOR AND JOHN R. DUTY FOR RESUBMISSION OF MATTER TO REFEREE—Filed July 13, 1931

To the Honorable Frank A. Youmans, District Judge:

The undersigned petitioners would respectfully show that they were made respondents to a petition by the trustee in the proceedings in the above bankruptcy matter, in which petition said trustee prayed for summary order on these petitioners requiring petitioner S. A. Taylor, as receiver of said bankrupt, and petitioner John R. Duty, as attorney for said receiver, to pay to said trustee certain sums of money retained and received by them under the order and direction of the Chancery Court of Benton County, Arkansas, to which petition of said trustee these petitioners filed their motion to dismiss on the ground that they were adverse claimants and that the referee in bankruptcy has no jurisdiction to make the order prayed for by said trustee in a summary proceeding, and when the matter came on for hearing before said referee the trustee offered in evidence a certified copy of [fol. 34] what purported to be a copy of the record of the papers and proceedings in said Chancery Court of Benton County, and the said referee made his findings upon said matter, in which he found that there was no service of process on the above named bankrupt in said receivership proceedings in said Chancery Court, and therefore said order and judgment of the Chancery Court appointing said receiver was null and void, because said Chancery Court had no jurisdiction to make said order and appointment.

Your petitioners would further allege that said purported copy of the proceedings of said Chancery Court did not contain all the facts in said case. That the said bankrupt, Parks Dry Goods Company, duly entered its voluntary appearance to said receivership proceedings in said Chancery Court, and therefore said Chancery Court had jurisdiction in the matter and no service of process was necessary.

Therefore, petitioners respectfully submit that this matter should be referred back to said referee with instructions to re-open said matter and permit your petitioners to offer in evidence competent testimony showing the fact that the

actual voluntary appearance of the said Parks Dry Goods Company was duly entered in said proceedings in the Chancery Court to the end that all the facts may be before said referee and this court upon a final decision as to the jurisdiction of said Chancery Court.

Wherefore, petitioners pray that the matter certified to this court by the referee be referred back to said referee with instructions to re-open said case for the taking of further testimony on the question of facts involved as to whether or not the said Chancery Court had jurisdiction of the person of the said bankrupt, Parks Dry Goods Company, at the time of the appointment of the receiver and the other proceedings in said matter had in said Chancery Court.

Respectfully submitted, S. A. Taylor, John R. Duty, Petitioners, by W. N. Ivie, Their Attorney.

[fol. 35] IN UNITED STATES DISTRICT COURT

[Caption omitted]

STIPULATION FOR RESUBMISSION TO REFEREE—Filed March 25, 1932

The trustee in the above bankruptcy matter having made S. A. Taylor, as receiver, and John R. Duty, as attorney, respondents to a petition for a summary order against them, and said respondents having answered in said proceedings and asked that the decision of the referee in said petition for summary order be reviewed by the District Court, and said certificate for review having been issued in due time, and said respondents having duly filed their petition asking that said matter be referred back to the referee to re-open said matter and permit said respondents further evidence in the nature of certified copies of the record tending to show that the actual voluntary appearance of the said Parks Dry Goods Company was duly entered in said proceedings in the Chancery Court of Benton County, at the time said receiver was appointed in this action.

It is, therefore, now by attorneys for both the trustee and said respondents hereby stipulated, with the consent of the court that this matter may be returned to said referee and reopened to the extent that said referee may

include in his certificate for review the consideration of said testimony offered by said respondents tending to show that said bankrupt, Parks Dry Goods Company, duly entered its voluntary appearance in said action in said Chancery Court, which evidence consists of certified copy of the docket record of said Chancery Court and the amended decree of said court appointing said respondent Taylor as receiver in said action, and that said referee by supplementary certificate may certify the facts and include said additional evidence in sending the record to the District Court for review.

W. N. Ivie, Attorney for Respondents S. A. Taylor and John R. Duty. C. R. Barry, Attorney for Petitioner, Trustee in Bankruptcy.

[fol. 36] Certified Copy of Order of Benton Chancery Court, Appointing Receiver, Including Marginal Entry

(Attached to Stipulation for resubmission filed in U. S. District Court March 25, 1932.)

3rd day of Benton Chancery Court, 10th day of January, 1931.

IN THE CHANCERY COURT OF BENTON COUNTY, ARKANSAS

No. 5663

ELY & WALKER DRY GOODS COMPANY, a Corporation, and FIRST NATIONAL BANK OF ROGERS, ARKANSAS, a Corporation, Plaintiffs,

vs.

PARKS DRY GOODS COMPANY, a Corporation, Defendant

Now on this 10th day of January, 1931, comes on for hearing the application of the plaintiffs herein for Receiver in this cause and the appearance of defendant being entered in writing and the court being well and sufficiently advised in the premises finds, that a receiver is necessary, and it is ordered that Sidney A. Taylor be and he is hereby appointed receiver of said corporation together with all

of its assets of every kind, nature or character and he will upon filing the oath as required by law and a bond in the sum of $10,000.00 enter upon his duties as such receiver, and it is ordered that he take charge of all assets, books, records, bills receivable, notes, bonds, choses in action and every kind and nature of assets belonging to said corporation and carefully preserve same and operate the business of said corporation under the orders and directions of this court and until the further orders of this court, and that all officers, agents, attorneys and employees of said corporation are directed to turn over to said Receiver all assets of said corporation, books, records, papers and every other thing belonging to said corporation, and all persons, firms, corporations or others are enjoined from in any wise interfering with said receivership.

The following appears on the margin of the record:

"Upon signing this record in open court, the court finds a defect in the order in that it fails to show the appearance of defendant and the order is amended by the court to show said appearance by interlineation this 9th day of July, 1931, and entered now to correct the record to make it speak the truth, this the 3rd day of the July Term, 1931."

Lee Seamster, Chancellor.

[fol. 37] Clerk's certificate to foregoing paper omitted in printing.

IN UNITED STATES DISTRICT COURT

[Caption omitted]

ORDER VACATING REFEREE'S ORDER REQUIRING S. A. TAYLOR AND JOHN R. DUTY TO PAY OVER CERTAIN MONEYS AND REFERRING MATTER AGAIN TO THE REFEREE FOR FURTHER TESTIMONY AND CONSIDERATION UPON WHOLE RECORD INCLUDING SUCH NEW TESTIMONY—Entered March 25, 1932

Upon the petition of S. A. Taylor and John R. Duty, and the stipulation of counsel, heretofore filed herein, it is by the court considered and ordered that the order of the referee in bankruptcy of date June 23, 1931, requiring Sidney

A. Taylor to pay to the trustee in bankruptcy herein the sum of Fifteen Hundred Dollars, and requiring John R. Duty to pay said trustee the sum of Five Hundred Dollars, now pending before the court upon the petition of said Taylor and Duty for review, be and the same is hereby vacated and set aside, and that said matter be and the same is hereby again referred to said referee with directions to reopen said matter for the introduction of further testimony on behalf of petitioners as in said stipulation provided, and for consideration and determination anew by the referee upon the whole record, including such additional testimony.

This March 25, 1932.

Frank A. Youmans, Judge.

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF REFEREE HOLDING THAT FORMER ORDER WAS CORRECT AND SHOULD BE SUSTAINED—Dated August 16, 1933

At Forth Smith, said district and division on this 16th day of August, 1933, before A. A. McDonald, Referee:

This matter comes on for hearing before the court upon the additional testimony offered by Sidney A. Taylor and John R. Duty, the respondents, which testimony consists of a certified copy of certain proceedings in the Chancery Court of Benton County, Arkansas, not set forth in the transcript of said cause heretofore introduced in evidence in this cause.

Upon considering the said additional evidence the referee is of the opinion that his original order and finding in this cause is proper and correct and should be sustained.

The respondents Sidney A. Taylor and John R. Duty, having filed their petition for review of said matter in due time the record herein with all additional proceedings had will be certified to the court for review of my action in the premises.

A. A. McDonald, Referee in Bankruptcy.

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED CERTIFICATE ON REVIEW—Filed August 17, 1933

I, A. A. McDonald, one of the referees of said court having said matter in charge do hereby certify that in the course of the proceedings in said cause before me, the following question arose pertinent to the said proceedings:

That this matter was originally heard and considered by me upon a duly certified transcript and record of proceedings had in the Chancery Court of Benton County, Arkan- [fol. 39] sas, and it was agreed and stipulated in open court by both the trustee and his attorney and the respondents, Sidney A. Taylor and John R. Duty, and their attorney, that said transcript was a full, true and correct record of said proceedings, all of which appears from my original order in said matter. I decided said matter in favor of the trustee for the reasons stated in my original order in the case, and, upon petition of the said Sidney A. Taylor and John R. Duty, respondents, this matter was lodged with the court for review of my said order; whereupon the said respondents filed their petition before the court for a re-reference of the matter to me for the purpose of considering further evidence in the matter which evidence consisted of a certified copy of certain proceedings in the Chancery Court of Benton County, not shown in the original transcript. By stipulation and agreement of all parties, said additional evidence has been admitted in the case and has been heard and considered by me and I concluded and decided said matter again in favor of the trustee and now return said record to the court upon my original certificate on review together with all proceedings had since the filing thereof.

And said questions are certified to the Judge for his opinion thereon.

Dated at Fort Smith, Arkansas, on this 16th day of August, 1933.

A. A. McDonald, Referee in Bankruptcy.

IN UNITED STATES DISTRICT COURT

[Caption omitted]

ORDER AFFIRMING ORDER OF REFEREE ON PETITION OF JOHN R. DUTY AND S. A. TAYLOR FOR REVIEW—Entered September 9, 1933.

This matter having been heard upon the petition of S. A. Taylor and John R. Duty for review of the referee's order requiring them to pay to the trustee certain sums of money retained and received by them from the estate of the bankrupt, and having been argued by counsel, W. N. Ivie appearing on behalf of the petitioners and C. R. Barry on behalf of the trustee:

Now, on consideration thereof, and being well and sufficiently advised in the premises, the court doth affirm the said order of the referee.

[fol. 40] To which ruling and order of the court the petitioners S. A. Taylor and John R. Duty except.

This September 9, 1933.

Heartsill Ragon, Judge.

IN UNITED STATES DISTRICT COURT

[Caption omitted]

PETITION OF SIDNEY A. TAYLOR FOR APPEAL—Filed September 15, 1933

To said Honorable Court:

Feeling himself aggrieved at the order and decree of this Honorable Court, entered herein on the 9th day of September, 1933, sustaining and affirming the findings, recommendations and judgment of the Referee in Bankruptcy in this cause, wherein it is found that the appellant is not an adverse holder and claimant to certain moneys belonging to the trustee in bankruptcy and of the estate of the Parks Dry Goods Company, a bankrupt, and awarding judgment, or a turn over order therein, and rendering a judgment to said effect against the petitioner, said petitioner respectfully prays the allowance of an appeal from

said order and judgment of this court to the United States Circuit Court of Appeals for the Eighth Circuit at St. Louis, Missouri, wherein the errors of this court may be examined and corrected, and that a citation may be granted, directed to the appellee, Henry O. Sternberg as Trustee in Bankruptcy of the estate of Parks Dry Goods Company, a corporation, commanding him to appear before the United States Circuit Court of Appeals for the Eighth Circuit to do and receive that which may appertain to justice to be done in the premises, and that a transcript of said proceedings duly authenticated may be transmitted to the United States Circuit Court of Appeals for the Eighth Circuit.

S. A. Taylor, by W. N. Ivie, His Attorney.

In United States District Court

[Caption omitted]

Assignment of Errors of S. A. Taylor—Filed September 15, 1933

Now comes S. A. Taylor, appellant herein, and files this his assignment of error-, complaining as follows:

[fol. 41] (1) That the order of the District Court of the United States affirming the judgment and decree of the referee in bankruptcy, A. A. McDonald, herein is wrong and in error, in that the court erred in not entering an order and decree reversing the findings and judgment of the referee in bankruptcy heretofore filed in this cause, in holding that said appellant was not an adverse claimant and in refusing and denying the motion of the appellant to dismiss the petition of the trustee in bankruptcy herein praying for a summary order requiring the petitioner to pay to said trustee the sum of $1,500.00 paid him as receiver in the state court, in the case of First National Bank of Rogers, Arkansas, plaintiff, vs. Parks Dry Goods Company, for the reason that said claimant was an adverse claimant, and that the referee had no summary jurisdiction.

(2) That the court erred in upholding the findings of the Referee in Bankruptcy herein holding that under the stat-

utes of Arkansas and the decision of the Supreme Court of Arkansas in the case of Barker vs. Cunningham, 105 Ark., 627, that the case in the Benton Chancery Court against Parks Dry Goods Company was in reality never begun; that there was no suit filed, and the Court had no jurisdiction and could make no order therein. That this finding was erroneous, as shown from the docket entries made in said case in said Benton Chancery Court, and a certified copy of the judgment and decree of said Benton Chancery Court with the amendment thereto filed and as a part of the record in this cause.

(3) That the Court erred in upholding the findings of the Referee, that the petitioner was not an adverse claimant under the law, and in holding that the Referee had jurisdiction to make the order requiring the appellant to pay over said sum of money to the Trustee in Bankruptcy herein.

(4) That the Court erred in sustaining and upholding the findings of the Referee that the complaint filed in the state court could only be construed to be filed under the State Insolvency Act, and that therefore the state court had no jurisdiction.

(5) That the Court erred in holding that the findings of the Referee were correct and should be sustained, in that the complaint filed in the state court in the case of First National Bank of Rogers, Arkansas, vs. Parks Dry Goods Company, a corporation, and the appointment of a Receiver and the conduct of the business in the state court was not of benefit to the bankrupt estate but tended to [fol. 42] dissipate and waste the same.

(6) The Court erred in affirming and sustaining the findings of the Referee herein that the state court was without authority to make the order allowing the fee of the petitioner on February 13, 1931.

(7) That the Court erred in affirming and sustaining the findings of the Referee, in holding that the claim of the petitioner was not adverse and was therefore not subject to the summary jurisdiction of the Chancery Court, and the Court erred in sustaining the findings of the Referee that it was stipulated in open court that the transcript of the state court was a full, true and correct record in said

cause, and in finding that there was no disputed question of fact.

(8) The Court erred in affirming and sustaining the findings of the Referee herein that the petitioner should be required to pay over to Henry O. Sternberg, Trustee in Bankruptcy for the Parks Dry Goods Company the sum of $1,500.00 which he received by an order and decree of the Chancery Court of Benton County, Arkansas, awarding said sum to him.

(9) The Court erred in refusing and failing to reverse the findings, judgment and decree of the Referee in Bankruptcy herein.

(10) The Court erred in failing and refusing to reverse the judgment of the Referee in overruling the respondent's petition to dismiss.

(11) The Court erred in refusing to reverse the findings of the Referee in awarding judgment against the appellant by summary order.

(12) That the findings, judgment and decrees of this Court are contrary to the law.

(13) That the findings, judgment and decree of this Court is contrary to the evidence.

(14) That the judgment and findings of this Court is contrary to both the law and the evidence.

(15) That the Court erred in sustaining and affirming the findings and report herein.

[fols. 43-45] Wherefore, petitioner prays that the decree and judgment of this Court rendered on the 9th day of September, 1933, be reversed.

S. A. Taylor, by W. N. Ivie, His Attorney.

In United States District Court

[Caption omitted]

Order Allowing Appeal of S. A. Taylor—Entered September 15, 1933

On this 15th day of September, 1933, came S. A. Taylor and files his petition for the allowance of an appeal from

the decree entered herein on the 9th day of September, 1933, together with his assignment of errors, and prays for reversal, upon consideration whereof;

It is ordered, that said petition for appeal be and it is hereby allowed, and that the judgment of the court herein be superseded upon the filing with the clerk of this court of a bond in the sum of $1,500.00, to be approved by the clerk of this court.

Heartsil Ragon, United States District Judge.

Bond on appeal for $1,500.00 approved and filed Oct. 12, 1933, omitted in printing.

[fol. 46] IN UNITED STATES DISTRICT COURT

[Caption omitted]

PETITION FOR APPEAL OF JOHN R. DUTY—Filed September 15, 1933

To said Honorable Court:

Feeling himself aggrieved at the order and decree of this Honorable Court, entered herin on the 9th day of September, 1933, sustaining and affirming the findings, recommendations and judgment of the referee in bankruptcy in this cause, wherein it is found that the appellant is not an adverse holder and claimant to certain moneys belonging to the Trustee in Bankruptcy and of the Estate of the Parks Dry Goods Company, a bankrupt, and awarding judgment or a turn over order therein, and rendering a judgment to said effect against the petitioner, said petitioner respectfully prays the allowance of an appeal from said order and judgment of this court to the United States Circuit Court of Appeals for the Eighth Circuit at St. Louis, Missouri, wherein the errors of this court may be examined and corrected, and that a citation may be granted, directed to the [fol. 47] appellee, Henry O. Sternberg as Trustee in Bankruptcy of the Estate of Parks Dry Goods Company, a corporation, commanding him to appear before the United States Circuit Court of Appeals for the Eighth Circuit to

do and receive that which may appertain to justice to be done in the premises, and that a transcript of said proceedings duly authenticated may be transmitted to the United States Circuit Court of Appeals for the Eighth Circuit.

John R. Duty, by W. N. Ivie, His Attorney.

IN UNITED STATES DISTRICT COURT

[Caption omitted]

ASSIGNMENT OF ERRORS OF JOHN R. DUTY—Filed September 15, 1933

Now comes John R. Duty, appellant herein, and files this his assignment of errors, complaining as follows:

(1) That the order of the District Court of the United States affirming the judgment and decree of the referee in Bankruptcy, A. A. McDonald, herein is wrong and in error, in that the court erred in not entering an order and decree reversing the findings and judgment of the Referee in Bankruptcy heretofore filed in this cause, in holding that said appellant was not an adverse claimant and in refusing and denying the motion of the appellant to dismiss the petition of the trustee in bankruptcy herein praying for a summary order requiring the petitioner to pay to said trustee the sum of $500.00 paid him as attorney for the receiver in the state court, in the case of First National Bank of Rogers, Arkansas, Plaintiff, vs. Parks Dry Goods Company, for the reason that said claimant was an adverse claimant, and that the referee had no summary jurisdiction.

(2) That the court erred in upholding the findings of the Referee in Bankruptcy herein, holding that under the Statutes of Arkansas and the decision of the Supreme Court of Arkansas in the case of Barker vs. Cunningham, 105 Ark., 627, that the case in the Benton Chancery Court against Parks Dry Goods Company was in reality never begun; that there was no suit filed, and the Court had no jurisdiction and could make no order therein. That this finding was erroneous, as shown from the docket entries

made in said case in said Benton Chancery Court, and a certified copy of the judgment and decree of said Benton [fol. 48] Chancery Court with the amendment thereto filed and as a part of the record in this cause.

(3) That the Court erred in upholding the findings of the Referee, that the petitioner was not an adverse claimant under the law, and in holding that the Referee had jurisdiction to make the order requiring the appellant to pay over said sum of money to the Trustee in Bankruptcy herein.

(4) That the Court erred in sustaining and upholding the findings of the Referee that the complaint filed in the state court could only be construed to be filed under the State Insolvency Act, and that therefore the state court had no jurisdiction.

(5) That the Court erred in holding that the findings of the Referee were correct and should be sustained, in that the complaint filed in the state court in the case of First National Bank of Rogers, Arkansas, vs. Parks Dry Goods Company, a corporation, and the appointment of a Receiver and the conduct of the business in the state court was not of benefit to the bankrupt estate but tended to dissipate and waste the same.

(6) The Court erred in affirming and sustaining the findings of the Referee herein that the state court was without authority to make the order allowing the fee of the petitioner on February 13, 1931.

(7) That the Court erred in affirming and sustaining the findings of the Referee, in holding that the claim of the petitioner was not adverse and was therefore not subject to the summary jurisdiction of the Chancery Court, and the court erred in sustaining the findings of the Referee that it was stipulated in open court that the transcript of the state court was a full, true and correct record in said cause, and in finding that there was no disputed question of fact.

(8) The Court erred in affirming and sustaining the findings of the Referee herein that the petitioner should be required to pay over to Henry O. Sternberg, Trustee in Bankruptcy for the Parks Dry Goods Company the sum of

$500.00 which he received by an order and decree of the Chancery Court of Benton County, Arkansas, awarding said sum to him.

(9) The Court erred in refusing and failing to reverse the findings, judgment and decree of the Referee in Bankruptcy herein.

[fol. 49] (10) The Court erred in failing and refusing to reverse the judgment of the Referee in overruling the respondent's petition to dismiss.

(11) The Court erred in refusing to reverse the findings of the Referee in awarding judgment against the appellant by summary order.

(12) That the findings, judgment and decrees of this Court are contrary to the law.

(13) That the findings, judgment and decree of this Court is contrary to the evidence.

(14) That the judgment and findings of this Court is contrary to both the law and the evidence.

(15) That the Court erred in sustaining and affirming the findings and judgment of the Referee in his amended findings and report herein.

Wherefore, petitioner prays that the decree and judgment of this Court rendered on the 9th day of September, 1933, be reversed.

John R. Duty, by W. N. Ivie, His Attorneys.

IN UNITED STATES DISTRICT COURT

[Caption omitted]

ORDER ALLOWING APPEAL OF JOHN R. DUTY—Entered September 15, 1933

On this 15th day of September, 1933, came John R. Duty and filed his petition for the allowance of an appeal from the decree entered herein on the 9th day of September, 1933, together with his assignment of errors, and prayed for reversal, upon consideration whereof;

It is ordered, that said petition for appeal be and it is hereby allowed, and that the judgment of the court herein be superseded upon the filing with the clerk of this court of a bond in the sum of $500.00, to be approved by the Clerk of this court.

Heartsill Ragon, United States District Judge.

[fol. 50] Bond on Appeal for $500.00, approved and filed Oct. 4, 1933, omitted in printing.

[fol. 51] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO CONTENTS OF TRANSCRIPT AND PRINTING OF RECORD—Filed October 14, 1933

It is hereby stipulated and agreed by and between the respective counsel in the above entitled action, that in printing the transcript of record on appeal the titles and captions of the documents therein be omitted, and indicated by a line thus: (Title of court and cause), and that endorsements thereon be omitted with the exception of the clerk's filing endorsement.

[fol. 52] It is further stipulated and agreed that Rule 14 of the Circuit Court of Appeals for the Eighth Circuit shall apply to and govern the making up, filing and printing of the record in these cases, and that the transcript of record on appeal to said appellate court be consolidated in one transcript and shall consist of the following:

1. Petition of trustee for summary order.
2. Order to show cause, by referee.
3. Motion of respondents, S. A. Taylor and Jno. R. Duty, to dismiss petition.
4. Decision and order of referee overruling respondents' motion.
5. Petition for review.
6. Certificate of referee, certifying for review, with all documents attached thereto omitting repetition.

7. Petition of respondents for resubmission to referee to consider certain additional evidence, and amended certificate for review and exhibits thereto.

8. Order of court referring back to referee for amendment.

9. Amended certificate of referee on review, together with additional evidence, stipulations of counsel, etc., attached.

10. Stipulation of counsel as to making up record on appeal.

11. Order granting appeal, appeal bond and all orders of court, etc.

12. Certificate of clerk.

It is further stipulated and agreed that the involuntary petition in bankruptcy was filed on the 11th day of February, 1931, and Henry Sternberg was appointed receiver on same date, that Parks Dry Goods Company was adjudicated bankrupt on February 13, 1931, and that Henry Sternberg was appointed sole trustee and duly qualified as such on March 6, 1931.

W. N. Ivie, Attorney for Appellants. C. R. Barry, Attorney for Appellee.

[fol. 53] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 54] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 9881

S. A. TAYLOR, Appellant,

vs.

HENRY STERNBERG, Trustee in Bankruptcy, etc.

Appeal from the District Court of the United States for the Western District of Arkansas

and

No. 9882

JOHN R. DUTY, Appellant,

vs.

HENRY STERNBERG, Trustee in Bankruptcy, etc.

Appeal from the District Court of the United States for the Western District of Arkansas

ORDER OF SUBMISSION—March 15, 1934

These causes, Nos. 9881 and 9882, having been called for hearing in their regular order, the same are argued together, and argument was commenced by Mr. W. N. Ivie for appellants and concluded by Mr. Clinton R. Barry for appellee.

Thereupon, these causes were submitted to the Court on the transcript of the records from said District Court and the briefs of counsel filed herein.

[fol. 55] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 9881, March Term, A. D. 1934

S. A. TAYLOR, Appellant,

vs.

HENRY STERNBERG, Trustee in Bankruptcy for Parks Dry Goods Company, Bankrupt, Appellee

Appeal from the District Court of the United States for the Western District of Arkansas

No. 9882, March Term, A. D. 1934

JOHN R. DUTY, Appellant,

vs.

HENRY STERNBERG, Trustee in Bankruptcy for Parks Dry Goods Company, Bankrupt, Appellee

Appeal from the District Court of the United States for the Western District of Arkansas

Mr. W. N. Ivie for appellants.
Mr. Clinton R. Barry for appellee.

Before Stone and Woodrough, Circuit Judges, and Otis, District Judge

OPINION

[fol. 56] STONE, Circuit Judge, delivered the opinion of the court:

These are separate appeals from an order requiring turning over to the trustee in bankruptcy of the Parks Dry Goods Company of $1,500.00 and $500.00 by Taylor and by Duty, respectively.

The undisputed facts are that Taylor was appointed receiver of the above company and Duty attorney for the receiver by the Chancery Court of Benton County, Arkansas. A month later, an involuntary petition in bankruptcy was filed against the company and an adjudication followed two days later (February 13, 1931). On the above day of

adjudication (February 13, 1931), the receiver presented his "Final Report", signed by him and by Duty (as "Attorney for Receiver") wherein he stated his receipts and expenditures as receiver; that the bankruptcy proceeding was filed and would be immediately adjudicated; and asking approval of the report, authority to make certain payments (including sums to be allowed to him, as receiver, and to Duty, as attorney) and thereafter for authority to turn over the balance to the bankruptcy court. The court responded by various allowances, including $1,500.00 to Taylor for services as receiver, and $500.00 to Duty for services as attorney for the receiver and for the plaintiff in the receivership suit. The trustee applied for an order against Taylor and Duty to turn over the above sums paid to and retained by them under the above allowance. They filed a motion to dismiss the application for lack of jurisdiction to proceed summarily. The referee regarded the controlling law question to be "the jurisdiction of the State court in the receivership case" and, determining that no such jurisdiction existed because the summons therein was never served (citing Barker v. Cunningham, 104 Ark. 627), ruled the situation governed by Finneran v. Burton, 291 Fed. 37, this Court, and sustained the turn over application. On re-reference to the referee, additional evidence showed a voluntary appearance of the defendant (Parks Dry Goods Company) in the receivership suit. The final report of the referee sustained his first report. The order of the referee was affirmed by the trial court.

No attempt is here made to sustain the order on the basis that there was no jurisdiction in the State court to appoint the receiver. The issue here is whether appellants are "adverse" claimants within the rule that summary jurisdiction in bankruptcy does not exist where an adverse [fol. 57] claimant is in possession of the property sought to be recovered.

It has been directly held by the Third Circuit that allowances by a State court to a receiver and to counsel for the receiver, made after initiation of bankruptcy proceedings, are subject to a summary turn over order by a bankruptcy court (In re Crosby Stores, 63 Fed. (2d) 812, 814), and by the Sixth Circuit that a receiver is not an adverse claimant as to an allowance for services made to and received by him, after notice of bankruptcy proceedings (In re Dia-

mond's Estate, 259 Fed. 70, 75, certiorari denied 249 U. S. 614). Even as to the funds or property held by him as such receiver he is not an adverse claimant (In re Watts and Sachs, 190 U. S. 1, 27; In re Diamond's Estate, supra, p. 74; Bank of Andrews v. Gudger, 212 Fed. 49, 55, C. C. A. 4). Also, there is no jurisdiction in a State court to make orders of allowances to its receiver or his counsel after filing of the bankruptcy petition but claims for such services must be presented to the bankruptcy court (Gross v. Irving Trust Co., 289 U. S. 342; Lion Bonding & Surety Co. v. Karatz, 262 U. S. 640, 642; Silberberg v. Ray Chain Stores, 58 Fed. (2d) 766, C. C. A. 3; Moore v. Scott, 55 Fed. (2d) 863, C. C. A. 9; In re Diamond's Estate, 259 Fed. 70, 73, C. C. A. 6; also see State of Mo. v. Angle, 236 Fed. 644, 653, this court). The above citations sustain and, most of them, apply the use of a summary proceeding to force turn over to the trustee of funds of receivers or of allowances so made from such funds for services of receivers and their counsel.

The order should be, and is, affirmed.

[fol. 58] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 9881

S. A. TAYLOR, Appellant,

vs.

HENRY STERNBERG, Trustee in Bankruptcy for Parks Dry Goods Company, Bankrupt

DECREE—April 19, 1934

Appeal from the District Court of the United States for the Western District of Arkansas.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Arkansas, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court appealed from, in this cause be, and the same is hereby, affirmed with costs; and that Henry Sternberg, Trustee in Bankruptcy for Parks Dry Goods

Company, Bankrupt, have and recover against S. A. Taylor the sum of Twenty Dollars for his costs herein and have execution therefor.

April 19, 1934.

[fol. 59] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 9882

JOHN R. DUTY, Appellant,

vs.

HENRY STERNBERG, Trustee in Bankruptcy for Parks Dry Goods Company, Bankrupt

DECREE—April 19, 1934

Appeal from the District Court of the United States for the Western District of Arkansas.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Arkansas, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court appealed from, in this cause be, and the same is hereby, affirmed with costs; and that Henry Sternberg, Trustee in Bankruptcy for Parks Dry Goods Company, Bankrupt, have and recover against John R. Duty the sum of Twenty Dollars for his costs herein and have execution therefor.

April 19, 1934.

[fol. 60] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

[Titles omitted]

No. 9881

No. 9882

MOTION FOR REHEARING—Filed May 17, 1934

S. A. Taylor and John R. Duty, appellants in the above entitled and numbered cases, pray that this Honorable Court will rehear and reconsider the matters decided by

this court in its opinion filed April 18, 1934, and cause an order, or orders, to be made herein revoking and recalling the opinion and decree of this court, made in these causes on the said date, and that this Honorable Court will reverse and remand with directions the decree of the District Court, upon the following grounds, to-wit:

[fol. 61] I

The appeals in these cases were from an order of the District Court affirming an order of the referee in bankruptcy "requiring turning over to the trustee in bankruptcy of the Parks Dry Goods Company of $1,500.00 and $500.00 by Taylor and by Duty respectively." The undisputed facts are that Taylor was appointed receiver of said Company and Duty attorney for the receiver by the Chancery Court of Benton County, Arkansas. A month later an involuntary petition in bankruptcy was filed against the company and an adjudication followed two days later (February 13, 1931). On said date, February 13, 1931, the receiver presented his final report to said Chancery Court and asked approval of the report and for certain allowances including the sum allowed to him, as receiver, and to Duty, as attorney, and for authority to turn over the balance to the bankruptcy court. The court made various allowances including the $1,500.00 to Taylor for services as receiver, and $500.00 to Duty for services as attorney for the receiver and for the plaintiffs in the receivership suit. The trustee, appellee herein, five months later applied for a summary order against Taylor and Duty to turn over the above sums paid to and retained by them under the above allowance. They filed a motion to dismiss the application for lack of jurisdiction to proceed summarily. The referee held that the state court in the receivership case had no jurisdiction because the summons therein was never served and sustained the turn over application. On re-reference to the referee additional evidence showed a voluntary appearance of the defendant, Parks Dry Goods Company, in the receivership suit. The final report of the referee sustained his first order, and the order of the referee was affirmed by the trial court. No attempt was made in this court to sustain the order on the basis that there was no jurisdiction in the state court to appoint the receiver. The sole issue being as to whether appellants were adverse

claimants within the rule that summary jurisdiction in bankruptcy does not exist where an adverse claimant is in possession of the property sought to be recovered.

[fol. 62] This court under its opinion filed herein on April 18, 1934, holds that "allowances by a state court to a receiver and to counsel for the receiver, made after initiation of bankruptcy proceedings, are subject to a summary turn over order by bankruptcy court" on the basis of the opinion in the cases of In Re Crosby Stores, 61 Fed. (2) 812, 814, by the Third Circuit, and In Re Diamonds Estate, 259 Fed. 70, 75, by the Sixth Circuit. We submit that the court misconceived and overlooked the fact that in the case of In Re Crosby Stores the holding cited by this court, was mere dictum and under the facts in that case did not relate to the issues involved in the instant case, as to whether or not the bankruptcy court had summary jurisdiction, as shown from the statement of the Supreme Court on appeal in that case entitled Gross vs. Irving Trust Company, 289 U. S. at page 343, which says the question as to whether or not the Circuit Court of Appeals erred upon the ground that it held that the District Court had power to proceed in a summary proceeding in bankruptcy was not considered by the Supreme Court "because it appears from the record that the point was abandoned in the District Court." And further this court overlooked in its opinion the distinction that in the Crosby Stores case and also in the In Re Diamonds Estate case the allowances to the receiver and counsel were for services by them and the disbursement of the sums allowed was rendered and made "after such receiver and counsel knew of the bankruptcy proceeding and of the efforts of the bankruptcy court then and there to prevent such action." While in the instant case the allowances were for services rendered by such receiver and counsel prior to the bankruptcy proceedings and prior to any notice of such proceeding and without any efforts of the bankruptcy court then and there to prevent such action, the court overlooked the rule of law as announced in the case of In Re Jack Stolkin Inc. 42 Fed. (2) 829, that if such services were performed prior to the filing of the petition in bankruptcy they could be allowed and paid for in an order of the state court in disposing of the state receivership matter, although such order was made subsequent to the filing of such bankruptcy petition, and this holding is [fol. 63] supported by the case of Louisville Trust Co. vs.

Cominger, 184 U. S. 18; Galbraith v. Valleley, Trustee, 256 U. S. 46; Randolph v. Scruggs, 190 U. S. 538; Crocker v. Kay, 62 Fed. (2) 391 (9th Cir.), and In Re Rathman vs. Booth, 183 Fed. 913, which is cited with approval by the Supreme Court in the Galbraith case, supra.

The court further overlooked the rule of law as announced by this court in the recent case of Guaranty Trust Company N. Y. vs. Daniel, Trustee, 49 Fed. (2) 866, holding that the "rule that summary jurisdiction in bankruptcy does not exist against an adverse claimant in possession of property or money sought to be recovered." "Applies to any suit brought before the referee by the trustee to recover a sum of money alleged to belong to the bankrupt estate."

II.

The court in its opinion in holding "There is no jurisdiction in a state court to make orders of allowances to its receiver or his counsel after the filing of the bankruptcy petition, but claims for such services must be presented to the bankruptcy court." Overlooked the distinction that this rule of law is only applicable to the question of ("what court shall decide as to whom assets are to be distributed," and does not apply to the question "as to whom assets are to be distributed", or in other words, if it was a question as to the amount that should be distributed to the receiver or attorney for services rendered then the bankruptcy court might claim the jurisdiction to pass upon the question for the distribution of the assets as part of the administration of the bankruptcy estate over which the bankruptcy court has exclusive jurisdiction, and we submit that in all the cases cited as authority for the above rule the courts in holding that the bankruptcy court has exclusive jurisdiction to pass upon the question of the amounts to be distributed always preserve the right of the claimant to apply to the proper forum for an order allowing and distributing his claim. In the instant case the appellants by [fol. 64] a summary order are absolutely denied any payment or any sum for their services admittedly rendered as attorney and receiver in good faith simply upon the technicality that they applied to the wrong court for their allowance of their claim. For illustration, if the order of the referee affirmed by the District Court and by this court is literally carried out the appellant Duty will lose all com-

pensation for his services not only to the receiver but his services to the plaintiffs in the original suit in which the receiver was appointed thereby giving such plaintiffs, who are now creditors, the benefit of any amount they turn over to the estate. We further submit that this rule of law as announced by this court overlooked the plain mandate of the Supreme Court of the United States as announced in the case of In Re Watts and Sachs, 190 U. S. on page 35, in which the court said that assuming that the bankruptcy proceedings operated to suspend the further administration of the insolvent's estate in the state court, yet it remained to the state court to transfer the assets, settle the accounts of its receiver and close its connection with the matter, and in the case of Roberts Cotton Oil Company vs. F. E. Morse and Company, 97 Ark. 513, the Supreme Court of Arkansas held that bankruptcy proceedings terminates the jurisdiction of the state court in a receivership of a corporation, but the state court is required upon receiving notice of such bankruptcy proceedings to transfer the assets, settle the accounts of its receiver, and close its connection with the matter.

With due respect, therefore, to the opinion herein of this Honorable Court, we respectfully submit that the findings and holding is contrary to the plain direction of the Supreme Court of the United States and to the Supreme Court of the State of Arkansas, in which this case arose, and such decision will confuse and handicap the Chancery Courts of the State of Arkansas in all matters in which a receiver is to be appointed, for if this decision is literally carried out, in our opinion the state court upon the filing of a petition in bankruptcy, regardless of how long the receivership suit has been pending in the state court, would lose jurisdiction to such an extent that they would not have [fol. 65] any power even to discharge their receiver or direct him to settle the estate. For in this case the learned Chancery Court of Benton County, Arkansas, merely attempted and undertook to follow out the plain instructions of the Supreme Court of this state and the Supreme Court of the United States by severing its connection with the corporation immediately and directing the settlement of the accounts of its receiver and close its connection with the matter.

For the foregoing reasons we respectfully urge that the

judgment, decree and opinion herein rendered by this court be set aside and a rehearing granted.

W. N. Ivie, Counsel for Appellants.

I hereby certify that in my opinion, as counsel herein, the grounds of the foregoing petition are well founded and I believe the foregoing petition for a rehearing in said causes to be well founded in law and that the same is proper to be presented and filed.

W. N. Ivie, Counsel for Appellants.

[File endorsement omitted.]

[fol. 66] In United States Circuit Court of Appeals

Order Denying Petition for Rehearing—May 21, 1934

These causes came on this day to be heard upon the petition for a rehearing, filed by counsel for appellants.

On Consideration Whereof, It is now here ordered by this Court, that said petition for a rehearing of these causes, be, and the same is hereby, denied.

May 21, 1934.

In United States Circuit Court of Appeals

Præcipe for Transcript for Supreme Court, U. S.—Filed May 31, 1934

The Clerk of this Court will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above entitled causes in accordance with the rules of the Supreme Court of the United States and especially Rule 38, paragraph 7 thereof, including therein the following:

1. The Printed Record in the Circuit Court of Appeals.
2. Minute entries showing argument of causes.
3. Opinion of the Court.
4. The Judgment or decree.
5. Motion for re-hearing.
6. Ruling of the Court on motion for re-hearing.

7. This designation.
8. Clerk's certificate.

W. N. Ivie, Attorney for Appellants, Fort Smith, Arkansas.

[fol. 67] Service accepted and acknowledged this 30th day of May, 1934.

C. R. Barry, Attorney for Appellee.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION OF APPELLANTS TO STAY MANDATE—Filed June 4, 1934

Comes now the appellants above named, and respectfully move this Honorable Court to stay the mandate in the above entitled actions and not permit the same to be issued out of said causes until the further order of the court as provided by Rule number 32 of this court, on the ground and for the reason that appellants expect and intend in good faith, within the time allowed by law, to apply to the Supreme Court of the United States of America by petition for a review on writ of certiorari the decision and judgment rendered in favor of appellee and against appellants in the above entitled actions. And in support of this motion the said appellants and each of them represent unto the court as follows:

1. That on or about April 18, 1934, an order and judgment was entered by this court, affirming the judgment in said causes of the District Court of the United States for the Western District of Arkansas, Fort Smith Division.

2. That thereafter and within the time and in the manner prescribed by the rules of this court the appellants filed their petition for a rehearing in said causes.

3. That afterwards, on May 21, 1934, an order and judg-
[fol. 68] ment was entered by this court, overruling and denying appellants' petition for a rehearing in this cause.

4. That under the rules of this court the mandate in said causes will issue on the 31st day of May, 1934, being ten days after the denial of said petition for rehearing.

5. That appellants intend to file in the Supreme Court of the United States a petition for certiorari in this court, as provided by the statutes of the United States in such cases made and provided, and in accordance with the rules of said Supreme Court of the United States, and that appellants intend to file said petition for certiorari in good faith and in accordance with the statute and the rules of said Supreme Court hereinbefore mentioned.

6. That the judgment in these cases was as follows: against the appellant Taylor for the sum of Fifteen Hundred Dollars ($1500.00), and against the appellant Duty for the sum of Five Hundred Dollars ($500.00). That on the date when the appeal in these causes was allowed appellant Taylor filed his bond in the penal sum of Fifteen Hundred Dollars ($1500.00), and the appellant Duty in the penal sum of Five Hundred Dollars ($500.00), with Hartford Accident and Indemnity Company of Hartford, Conn., as surety on appellant Taylor's bond, and H. T. Penn of Rogers, Arkansas, as surety on appellant Duty's bond, each of said bonds conditioned that if the said appellants should perfect their appeal to effect, and answer all damages and costs if they fail to make their said pleas good then the obligation should be null and void, otherwise to remain in full force and effect; which said appeal bonds were approved by the Judge of the District Court of the United States for the Western District of Arkansas on the same [fol. 69] date that they were filed, and which said bonds are each still in full force and effect.

7. That in the opinion of appellants and their counsel said bonds already in force and effect are sufficient fully to protect the interest of appellee in said causes during the period of said stay order, or any extension thereof, as provided by the rules of this court.

Wherefore, these appellants and each of them pray, as above set forth, that the issue of the mandates of this court in said causes be stayed until and including June 30, 1934, and thereafter until the final disposition of said causes by the Supreme Court as provided by said Rule 32 of this

court, provided the certificate of the Clerk of the Supreme Court is filed in the office of the Clerk of this Court on or before June 30, 1934, in the manner and form and as prescribed by said Rule 32 of this Honorable Court. All of which is respectfully asked and prayed.

S. A. Taylor, John R. Duty; by W. N. Ivie, their Attorney.

STATE OF ARKANSAS,
County of Sebastian:

W. N. Ivie upon oath says:

That he is the sole attorney of record for each of the appellants in the above entitled actions; that he served a copy of the above and foregoing motion upon the appellee by mailing to Henry Sternberg, Fort Smith, Arkansas, appellee, and Clinton R. Barry, Fort Smith, Arkansas, counsel for said appellee; said copies being mailed by regular [fol. 70] United States mail with the postage duly paid thereon and the same having been deposited in the Post Office at Fort Smith, Arkansas, on May 28, 1934.

W. N. Ivie.

Subscribed and sworn to before me this 28th day of May, 1934. Roy Gean, Notary Public. My Com. Ex. April 22, 1937. (Seal.)

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING MOTION FOR STAY OF MANDATES—
June 7, 1934

On Consideration of the motion filed by counsel for appellants for a stay of the mandates in these causes pending a petition to the Supreme Court of the United States for writ of certiorari, It is now here ordered by this Court that said motion, be, and the same is hereby, denied.

June 7, 1934.

[fol. 71] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 72] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 261

ORDER ALLOWING CERTIORARI—Filed October 8, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 73] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 262

ORDER ALLOWING CERTIORARI—Filed October 8, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsed on cover:] File Nos. 38, 889, 38, 890. U. S. Circuit Court of Appeals, Eighth Circuit, Term No. 261. S. A. Taylor, Petitioner, vs. Henry Sternberg, Trustee in Bankruptcy for Parks Dry Goods Company, Bankrupt. Term No. 262. John R. Duty, Petitioner, vs. Henry Sternberg, Trustee in Bankruptcy for Parks Dry Goods Company, Bankrupt. Petition for writs of certiorari and exhibit thereto. Filed August 6, 1934. File Nos. 261, O. T., 1934, 262 O. T., 1934.

Nos. 261 & 262

AUG. 6 193
CHARLES ELMORE CR

IN THE

Supreme Court of the United States

OCTOBER TERM 1934.

No. .....

S. A. TAYLOR, and JOHN R. DUTY ..... Petitioners

vs.

HENRY STERNBERG, Trustee in Bankruptcy for PARKS DRY GOODS COMPANY, Bankrupt ..... Respondent

PETITION FOR CERTIORARI AND BRIEF IN SUPPORT THEREOF

W. N. IVIE,
Attorney for Petitioners.

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FIRST POINT

1. The Circuit Court of Appeals, Eighth Circuit erroneously held that allowances by a State Court to a receiver and his counsel after the initiation of bankruptcy are subject to a turn over order by a bankruptcy court, and such receiver is not an adverse claimant as to allowances for services made after notice of bankruptcy proceedings. This holding is not justified by facts and is contrary to the ruling of this court and other Circuit Courts as well as the weight of authorities ... 8

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SECOND POINT

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IN THE

Supreme Court of the United States

OCTOBER TERM 1934.

No. .....

S. A. TAYLOR, and JOHN R. DUTY.....Petitioners

vs.

HENRY STERNBERG, Trustee in Bankruptcy for PARKS DRY GOODS COMPANY, Bankrupt ..... Respondent

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

Petitioners S. A. Taylor and John R. Duty jointly and severally pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals entered in the above entitled causes April 19, 1934 (R. 58-59), affirming the decree of the District Court of the United States for the Western District of Arkansas affirming order of referee on petition of John R. Duty and S. A. Taylor for review. (R. 39).

STATEMENT OF FACTS

This case involves the question whether the referee

in Bankruptcy and the District Court on review has jurisdiction by summary proceeding to order third parties to turn over to trustee in bankruptcy money retained as commissions to receiver and fees to his attorney claimed as having been earned prior to bankruptcy proceedings without the consent of said parties and over their specific objection to the jurisdiction to make such order.

The case was tried below on petition and motion to dismiss and agreed statement of facts, so that for the purpose of this petition the facts are not in dispute. So far as material here, the facts are as follows:

Taylor was appointed receiver of Parks Dry Goods Company, a corporation, by the Chancery Court of Benton County, Arkansas; a month later an involuntary petition in bankruptcy was filed against the company and adjudication followed two days later (February 13, 1931), on the same day, February 13, 1931, Taylor, as receiver, presented his final report to said Chancery Court and asked approval of the report and for certain allowances including the sum allowed to him as receiver and to Duty as attorney, and for authority to turn over the balance to the bankruptcy court. On this report the court made various allowances, including the $1500.00 to Taylor for services as receiver and $500.00 to Duty for services as attorney for the receiver and for the plaintiffs in the receivership suit. The trustee four months later (June 9, 1931), applied to referee for a summary order against Taylor and Duty to turn over the above sums retained by them under the above allowances, to which petitioners herein, Taylor and Duty, filed their joint motion to dismiss the application of the trustee for lack of jurisdiction in the referee to proceed against them summarily on the ground that they were adverse claimants in good faith and in possession of said sums so retained by them. On final hearing by the referee and in the District Court no question was raised as to the jurisdiction of the state

court to the appointment of the petitioners as receiver and attorney respectively, the sole issues being as to whether or not Taylor and Duty, petitioners herein, were adverse claimants within the rule "that summary jurisdiction in bankruptcy does not exist where an adverse claimant is in possession of the property sought to be recovered."

SPECIFICATION OF ERRORS AND JURISDICTION

The opinion of the Circuit Court of Appeals for the Eighth Circuit herein is set forth in record filed herewith pages 55, 56 and 57. Motion for re-hearing filed in United States Circuit Court of Appeals May 17, 1934, and within the time designated by the rules of said court. (R. 60-65). Order denying petition for re-hearing made May 21, 1934. (R. 66). The said Circuit Court of Appeals erred in its opinion in holding "That allowances by a state court to a receiver and to counsel for a receiver, made after initiation of bankruptcy proceedings, are subject to a summary turn over order by bankruptcy court", and in holding "that a receiver is not an adverse claimant as to an allowance for services made to and received by him after notice of bankruptcy proceedings", and in holding "even as to funds or property held by him as such receiver he is not an adverse claimant." And also said Circuit Court of Appeals erred in holding "There is no jurisdiction in a state court to make orders of allowances to its receiver or his counsel after filing of the bankruptcy petition, but claims for such services must be presented to the bankruptcy court."

REASONS FOR GRANTING THE WRIT.

The reasons why the writ should issue are:

I.

The decision of the said Circuit Court of Appeals in

holding that allowances by a state court to a receiver and to counsel for a receiver made after the initiation of bankruptcy proceedings are subject to a turn over order by a bankruptcy court and that a receiver is not an adverse claimant as to allowance for services made to and received after notice of bankruptcy proceedings, are contrary to the decision of this court in Louisville Trust Company v. Cominger, 184 U.S. 18; Galbraith v. Valleley, Trustee, 256 U.S. 46, and Randolph v. Scruggs, 190 U.S. 538, in which cases this court has laid down the principal that assignees, receivers and their attorneys to the extent that they assert rights to expenses incurred and compensation earned in good faith before the bankruptcy proceedings to have the merits of their cases determined in a jurisdictional proceeding suitable to that purpose and not by summary proceedings where punishment for contempt is the means of enforcing the order.

II.

The decision of the Circuit Court of Appeals in the instant case is also in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in the case of In Re Jack Stolkin, Inc., 42 Fed. (2) 829, which holds that for services performed or claims made prior to the filing of petition in bankruptcy can be allowed and paid for in an order of the state court in disposing of the state receivership matter, although such order is made subsequent to the filing of such bankruptcy petition. Said decision is also in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of Crocker v. Kay, 62 Fed. (2) 391, and is also in conflict with its own decision in the case of Rathman v. Booth, 183 Fed. 913, which was cited with approval by this court in the Galbraith case, supra. Said decision of the Circuit Court of Appeals for the Eighth Circuit is also in conflict with its own opinion in the case of Guaranty

Trust Co., N.Y. v. Daniel, Trustee, 49 Fed. (2) 866, in which the court held that "the rule that summary jurisdiction in bankruptcy does not exist against an adverse claimant in possession of property or money sought to be recovered; applies to any suit brought before the referee by the trustee to recover a sum of money alleged to belong to the bankrupt estate."

III.

The decision of the Circuit Court of Appeals in the instant case in holding that "there is no jurisdiction in a State Court to make orders of allowances to its receiver or his counsel after filing of the bankruptcy petition, but claims for such services must be presented to the bankruptcy court" is in conflict with the instructions and decision of this court in the case of In Re Watts and Sachs, 190 U.S. at page 35, in which this court said, "Assuming that bankruptcy proceedings operate to suspend the further administration of the insolvency estate in the state courts, yet it remains for the state court to transfer the assets, settle the accounts of the receiver and close its connections with the matter." This case was followed by the Supreme Court of Arkansas in the case of Roberts Cotton Oil Co. vs. F. E. Morse and Co., 97 Ark. 513, in which it was held that "bankruptcy proceedings terminate the jurisdiction of a state court in the receivership of a corporation, but the state court is required, upon receiving notice of such bankruptcy proceedings, to transfer the assets, settle the accounts of its receiver, and close its connection with the matter."

IV.

The questions involved herein are of importance in administering the bankruptcy law in the several states and the present decision in the instant case leaves the

state courts in confusion as to the proper procedure to be pursued in receivership and assignment cases pending in such state courts after the institution of bankruptcy proceedings, for if the decision in the instant case is permitted to stand State Courts would have no jurisdiction under the law or the rule of comity to make orders transferring the assets or to settle the accounts of its receivers or assignees as directed by the Supreme Court of the United States and the Supreme Court of Arkansas after such courts have received notice that bankruptcy proceedings have been instituted, and, therefore, would tend to disrupt the orderly conduct of state courts and the comity rule existing between state and Federal courts in surrendering jurisdiction over property in hands of receivers, trustees and other officers of the state courts at the time when bankruptcy proceedings were instituted.

V.

The decision of the Circuit Court of Appeals in the instant case in following the decision of the Circuit Court of Appeals of the Sixth Circuit in the case of In Re Crosby Stores Inc., 61 Fed. 812, 814, overlooked the fact that the decision in that case, from which the Circuit Court of Appeals in the instant case quoted, is mere dictum as shown from the statement of this court on review of said case of Crosby Stores under the style of Gross v. Irving Trust Company, 289 U.S. at page 343, which states that the very question involved in the instant case, that is that the Circuit Court of Appeals of the Sixth Circuit had erred in holding that the District Court had power to proceed in a summary proceeding in bankruptcy was not considered by this court "because it appears from the record that this point was abandoned in the District Court," which leaves the very point at issue in the instant case unsolved.

For these reasons it respectfully is submitted that this petition for writ of certiorari to review the judgment of the United States Circuit Court of Appeals of the Eighth Circuit should be granted.

W. N. IVIE,
Attorney for Petitioners.

This July ....., 1934.

Brief follows:

No.....

S. A. TAYLOR and
JOHN R. DUTY .....Petitioners

vs.

HENRY STERNBERG, Trustee in Bankruptcy for
PARKS DRY GOODS COMPANY,
Bankrupt ..... Respondent

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

STATEMENT

This is an application for a writ of certiorari for a review of a decree of the United States Circuit Court of Appeals of the Eighth Circuit affiming a decree of the United States District Court for the Western District of Arkansas, Fort Smith Division, affirming on review a turn over order by the referee in bankruptcy of said district.

The material facts and the questions involved are set forth in the foregoing petition.

The questions for decision are:

Has the bankruptcy court jurisdiction under summary proceedings to order turn over to the trustee in bankruptcy moneys held and retained by a receiver and his attorney appointed by a State Chancery Court, such money being held and retained by the receiver and attorney as fees and commissions under an allowance made by the State Court in an order winding up the receivership matter in the state court upon receiving notice of the filing of the bankruptcy proceedings, although such allowance is made by the state court subsequent to the filing of the bankruptcy petition where such petition for turn over order is filed four months subsequent to the allowance of such commissions and fee by the state court and where no taking possession of the money or property as the money or property of the bankrupt by any act of any officer of the bankruptcy court such as a referee, a receiver or a trustee?

The essential facts of the case are fully stated in the accompanying petition for certiorari, and in the interest of brevity are not repeated here. All necessary elaboration of the facts on the points involved will be made in the course of the argument which follows.

JURISDICTION

The jurisdiction of this court is based upon Judicial Code Section 240, as amended by the Act of February 13, 1925, U.S.C.A. Title 28, Volume 4, page 359, Section 347.

The original date of the judgment sought to be reviewed and reversed is dated April 19, 1934 (R. 57). Petition for rehearing was filed May 17, 1934, within the time provided by the rules of the Circuit Court of Appeals (R. 65), and the petition for rehearing was denied May 21, 1934 (R. 66).

FIRST POINT

1. The Circuit Court of Appeals for the Eighth Cir-

cuit in its opinion and judgment asked to be reviewed herein erroneously and arbitrarily held that "Allowance by a state court to a receiver and to counsel for a receiver made after the initiation of bankruptcy proceedings are subject to a turn over order by a bankruptcy court, and such receiver is not an adverse claimant as to allowance for services made to and received after notice of bankruptcy proceedings." This holding we maintain is not justified by the facts and is contrary to the rulings of this court and of other circuits, and is contrary to the former opinion of the said Eighth Circuit, as well as to the weight of authorities. The said Circuit Court of Appeals in its opinion relies and bases its opinion upon the opinion from the Sixth Circuit Court of Appeals in the case of In Re Crosby Stores Inc., 61 Fed. 812, 814. We submit that the facts in that case and the facts in the instant case are very distinguishable in that in the Crosby Stores case the allowances complained of were not only made and paid subseqquent to the initiation of bankruptcy proceedings, but the claim for commission and fees as receiver and attorney arose and was made subsequent to the institution of such bankruptcy proceedings, and the decision in the Crosby Stores case was reviewed by this court on certiorari and is reported under the head of Gross v. Irving Trust Company, 289 U.S. page 343, in which this court, as we think, expresses some doubt or uncertainty as to the very questions at issue in the instant case, in the following language:

> "The decision of the Circuit Court of Appeals is assailed as erroneous upon the further ground that that court held that the District Court had power to proceed in a summary proceeding in bankruptcy, although the receivers and their counsel were adverse claimants. We do not consider this contention, because it appears from the record that the point was abandoned in the District Court."

2. The decision of the Circuit Court of Appeals in

the instant case is directly in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in the case of In Re Jack Stolkin, Inc., 42 Fed. (2) 829. In that case the Circuit Court of Appeals for the Second Circuit, after citing the decision of this court in the case of Louisville Trust Company v. Comingor, 184 U.S. 18 and Galbraith v. Valleley Trustee, 256 U.S. 46, and other authorities, holds that:

> "Thus it seems to have been steadily held that the claims of an assignee for the compensation or indemnity for expenses in matters ante dating the filing of a petition in bankruptcy so far as they are not colorable cannot be disposed of in a summary proceeding. The amount which may be allowed depends upon the benefit which has been afforded to the bankruptcy estate. But it must be determined in a plenary action if the assignee stands on his rights in this respect."

3. The case of Louisville Trust Company v. Comingor, 184 U.S. 18, involved the same question as presented in the instant case. In that case Comingor, who was the assignee or trustee subsequent to the filing of bankruptcy proceedings, retained and paid himself as such trustee and his attorney commissions and fees, and thereafter the referee in bankruptcy entered an order requiring Comingor and his counsel to appear and show cause why they should not pay over to the receiver in bankruptcy the amount of said commission and fee. Comingor appeared and objected to the jurisdiction of the court to hear the matter in a summary proceeding. The referee held the response insufficient and made the order requiring Comingor to pay to the receiver in bankruptcy the sum of money paid to his attorney amounting to $3200.00. On a petition for review before the District Judge the finding of the referee was affirmed. An appeal was taken to the Court of Appeals for the Sixth Circuit. That Court reversed the decree of the District

Court affirming the order of the referee requiring Comingor to pay to the trustee the sum as aforesaid, and directing the setting aside of said order and decree. This court on reviewing the judgment of the Circuit Court of Appeals of the Sixth Circuit held,

> "The questions attempted to be litigated before the Referee and in the District Court as to the allowance of the two amounts could only be raised in the suit. If the jurisdiction of the District Court was not District Court by consent, and then only by plenary consented to, then the state court, under the circumstances of this case, was the proper forum, and the matters in dispute were to be disposed of there."

4. In the case of Galbraith v. Valleley, Trustee, 256 U.S. 46, this court followed the rule laid down in the Comingor case, supra, and reversed the Circuit Court of Appeals of the Eighth Circuit, and at page 50 of 256 U.S., supra, this court said,

> "The principle of the Comingor case has never been departed from in this Court. It establishes the right of an assignee for the benefit of creditors to the extent that he asserts rights to expenses incurred and compensation earned under an assignment in good faith before the bankruptcy proceedings, to have the merits of his claim determined in a judicial proceedings suitable to that purpose and not by summary proceedings where punishment for contempt is the means of enforcing the order. We see no occasion to depart from this practice."

5. The decision of the Circuit Court of Appeals in the instant case we think is also in direct conflict with the former opinion of that court in the case of Rathman v. Booth, 183 Fed. 913. The opinion in that case was by Circuit Judge Sanborn and is referred to and quoted by this court in the Galbraith case, supra, with approval. On page 926 in the opinion of the court Judge Sanborn

quotes from this court in the case of Murphy v. John Hofman and Co., 211 U.S. 562, 569, 570, as follows:

> "The jurisdiction in such cases arise out of the possession of the property and is exclusive of all other courts, although otherwise the controversy would be consizable by them. (Citing Whitney v. Wenman, 198 U.S. 539, and White v. Schloerb, 178 U.S. 542). The last two cases cited proceed upon and establish the principle that when the court of bankruptcy, through the act of its officers, such as referees, receivers, or trustees, has taken possession of the res, as the property of the bankrupt, it has ancillary jurisdiction to hear and determine the adverse claims of strangers to it, and that its possession cannot be disturbed by the process of any other court."

And Judge Sanborn, after quoting from this court as above, continues:

> "Here is the touchstone of the exclusive and of the summary jurisdiction of the bankruptcy court to determine the merits of adverse claims to liens upon and title to property claimed to belong to the bankrupt. It is the taking possession of the property, as the property of the bankrupt, by the act of some officer of the bankruptcy court such as a referee, a receiver, or a trustee. This is the touchstone of a summary jurisdiction and under this rule the court below had no jurisdiction to determine in a summary proceeding the merits of the claim of Booth, as that court had never through the act of its officers, such as referee, receivers or trustees, taken possession of the property of the bankrupt, nor is this result either unjust or unreasonable. The goods were in the custody of the law, and the acts of the state court and its receiver were presumably for the benefit of the estate."

SECOND POINT

1. The Circuit Court of Appeals of the Eighth Cir-

cuit in the instant case holds that "There is no jurisdiction in the state courts to make orders of allowances to its receiver or his counsel after the filing of bankruptcy petition, but claims for such services must be presented to the bankruptcy court." We submit that this holding of the Circuit Court of Appeals is in direct conflict with the opinion of the Circuit Court of Appeals for the Second Circuit in the case of In Re Jack Stolkin, supra, and also is in conflict with the opinions of this court in Comingor and Galbraith cases, supra, which are cited and quoted from in the argument of the first point herein, and is also in conflict with the direct instruction of this court in the case of In Re Watts and Sachs, 190 U.S., 1, 35; on page 35 this court in that case holds:

> "The state court was a court of original general jurisdiction. On the face of its record its jurisdiction has been properly invoked and has been properly exercised and was not open to collateral attack. Assuming that the proceedings in bankruptcy superseded further proceedings in the state court and nothing remained for the latter but to direct the surrender of the assets and the winding up of the accounts, the District Court was of the opinion that it might, by summary proceeding, take the assets out of the possession of the state court. The difficulty is that the receiver had no power to make the surrender when it was made. It was the representative of the state court. The property in its hands was property *in custodia legis* and it had only such authority as was given to it by the Court and could not exceed the limits prescribed by the Court."

And the court further holds that,

> "It has been already assumed that the bankruptcy proceedings operated to suspend the further administration of the insolvent's estate in the State Court, but it remained to the State Court to transfer the assets, settle the accounts of its receiver and close

its connection with the matter. Errors, if any, committed in so doing could be rectified in due course and in the designated way."

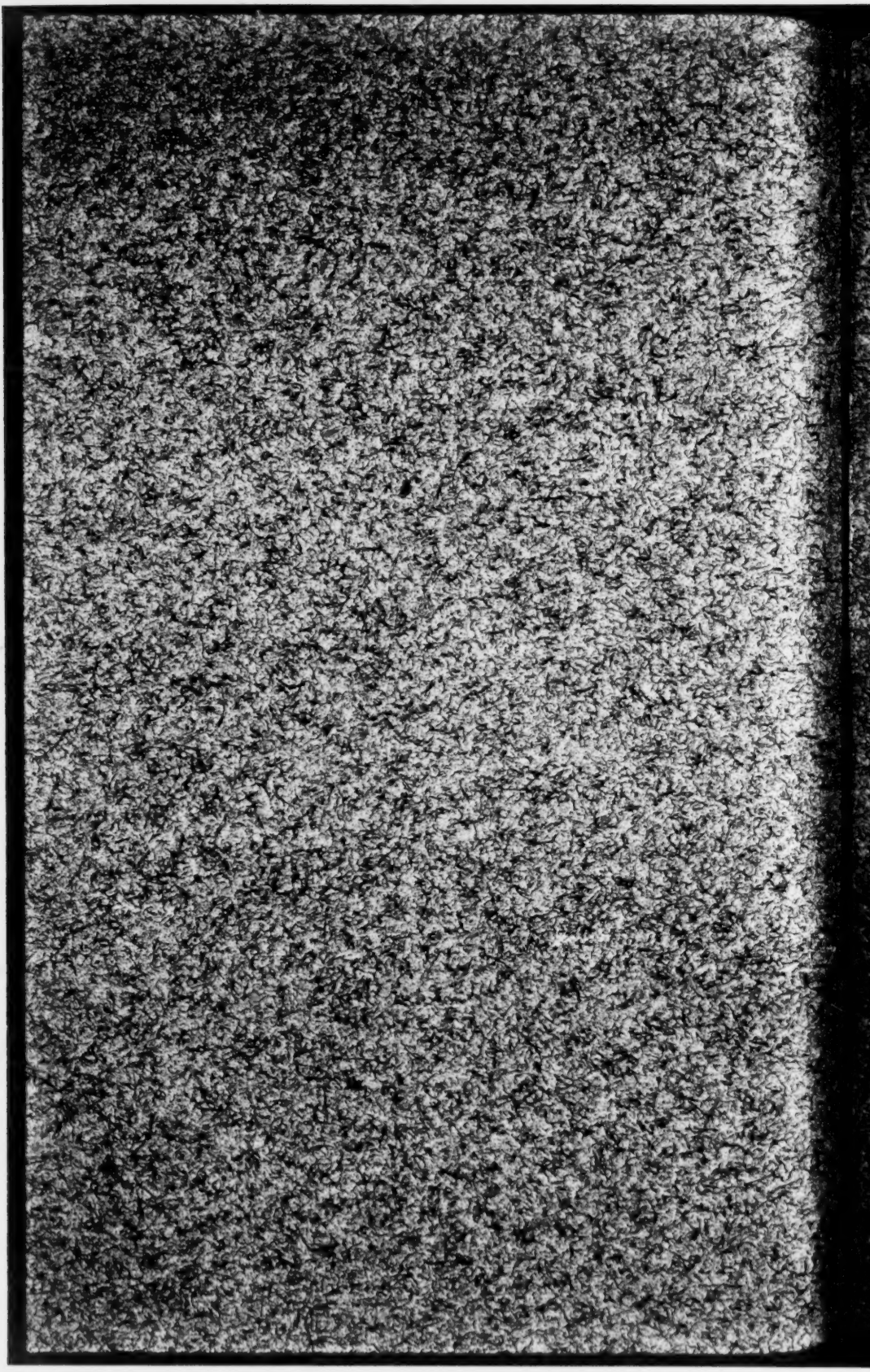
2. The same rule was followed by the Supreme Court of Arkansas in the case of Roberts Cotton Oil Company v. F. E. Morse and Co., 97 Ark. 513. In that case the Supreme Court of Arkansas holds that the Chancery Court had full jurisdiction to appoint a receiver for the purpose of collecting and preserving the estate and protecting the creditors, and while its orders therein might be voidable by a trustee in bankruptcy subsequently appointed, they would not be void upon a collateral attack by a stranger; and further says:

> "Involuntary bankruptcy presented against an insolvent corporation within four months of the appointment of a receiver of the corporation by a state court terminates its jurisdiction, and the state court is required to transfer the assets, settle the accounts of its receiver and close its connection with the matter."

CONCLUSION

It is, therefore, respectfully submitted that this case is one calling for the exercise by this court of supervisory powers, in order that the errors herein pointed out may be corrected; that the law may be properly and authoritatively defined and that the judgment of the District Court and of the United States Circuit Court of Appeals for the Eighth Circuit should be reversed in order that justice may be done to petitioners; and that to such an end a writ of certiorari should be granted and this court should review the decision of the United States Circuit Court of Appeals for the Eighth Circuit and finally reverse it.

W. N. IVIE,
Attorney for Petitioners.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

No. 261

S. A. TAYLOR, PETITIONER,

vs.

HENRY STERNBERG, TRUSTEE IN BANKRUPTCY FOR PARKS DRY GOODS COMPANY, BANKRUPT

No. 262

JOHN R. DUTY, PETITIONER,

vs.

HENRY STERNBERG, TRUSTEE IN BANKRUPTCY FOR PARKS DRY GOODS COMPANY, BANKRUPT

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

STATEMENT AND BRIEF FOR RESPONDENT

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STATEMENT AND BRIEF FOR RESPONDENT

STATEMENT OF FACTS

The statement of facts in appellant's brief is incomplete and, in one important particular, is incorrect, in that the following statement is made:

> "On final hearing by the referee and in the District Court no question was raised as to the jurisdiction of the State Court to the appointment of the petitioners as receiver and attorney respectively. . . "

The above statement is in error, as will be shown by an examination of the Record. The Petition for Summary Order filed by appellee in beginning the whole proceedings states:

> "That the said Benton Chancery Court had no jurisdiction of the subject matter of said action for the reason that the same were insolvency proceedings for the winding up of said bankrupt corporation and that sole and exclusive jurisdiction in said matter is lodged by the Constitution of the United States and by various acts of Congress relating to bankruptcy now in force in the United States District Court for the Western District of Arkansas."

In deciding the matter, the referee held:

> "That (the) complaint can only be construed to be filed under the State Insolvency Act, and therefore the State Court had no jurisdiction as that jurisdiction is exclusive in the Courts of Bankruptcy."

In passing upon the petition for review filed by appellants from the referee's order, the district court simply affirmed the order made by the referee, which affirmed the above finding of the referee.

Appellants submits the following as more complete statement of the facts involved in this appeal:

On January 10, 1931, appellant Sidney A. Taylor was appointed Receiver for the Parks Dry Goods Company by the State Chancery Court of Benton County, Arkansas, in insolvency proceedings brought by certain unsecured creditors for the purpose of winding up the affairs of the corporation and distributing its assets among its creditors. On February 11, 1931, a bankruptcy petition was filed against the corporation in the United States District Court having jurisdiction of the matter; and on the same day the appellee, Henry Sternberg, was appointed Receiver in Bankruptcy for the corporation, made his bond and qualified as such Receiver. That the Receiver immediately went to Rogers, Arkansas, the domicile of the bankrupt corporation, and

notified both of the appellants, Sidney A. Taylor and John R. Duty, of his appointment. Thereafter, on February 13, 1931, the appellants presented their joint application to the State Court for compensation to be allowed to them as Receiver and as Attorney for plaintiffs and Receiver in said Court, and on the same day the State Court allowed the Receiver compensation in the sum of $1500.00 and his Attorney compensation in the sum of $500.00. On this same date, February 13, 1931, the Parks Dry Goods Company was adjudicated a bankrupt and thereafter, in delivering the estate to the appellee as Trustee, the appellants withheld the sums allowed to them by the State Court and refused to deliver the same to the appellee, as Trustee. Thereupon, the Trustee applied for a summary order on the appellants to turn over said sums to him and, the matter having been finally heard by the Referee, the Trustee's application was granted, which order was, on petition for review brought by appellants, affirmed by the Court. An appeal was taken by appellants to the Circuit Court of Appeals for the Eighth Circuit, which affirmed the order of the District Court.

ARGUMENT

The appellants filed a response to the Trustee's application for a summary order which was in the nature of a demurrer to the jurisdiction of the Bankruptcy Court to entertain the application, or, in other words, a motion to dismiss the proceedings for lack of jurisdiction. No question of fact was presented to the Referee for determination by this plea and no denial was made of any of the allegations of the Trustee's application and the Referee, in passing upon appellants' plea to his jurisdiction, necessarily took the matters alleged in the Trustee's application as confessed, but by agreement of all parties the full record of proceedings in the State Court was presented to the Referee and considered by him in deciding the question of his jurisdiction.

The attention of the court is respectfully called to the following summary of the facts of the case which appear to appellee to be important: First: The bankruptcy petition was filed within four months of the appointment of the receiver by the State Court. Second: That their application for compensation was not filed by appellants in the State Court until after the petition in bankruptcy had been filed and after each of the appellants knew that it had been filed.

The above statements are not open to question. The second statement is proven by the following quotation from the application for compensation filed by appellants in the State Court. (Trans. page 23). "Your receiver wishes to report that a petition in bankruptcy Parks Dry Goods Company, and the defendant has consented to bankruptcy and that adjudication will be made immediately.

Your receiver also wishes to report that a receiver has been appointed in the Federal Court by order of the United States District Court for the Westen District of Arkansas."

THE BANKRUPTCY COURT HAS SUMMARY JURISDICTION IF THE PROPERTY INVOLVED WAS CONSTRUCTIVELY IN POSSESSION OF ITS RECEIVER WHEN THE PROCEEDINGS WERE BEGUN.

Jurisdiction of the State Court and of the Bankruptcy Court in the premises is not concurrent. The jurisdiction of the Bankruptcy Court is superior and exclusive and jurisdiction of the State Court ceased when the bankruptcy petition was filed. This court has declared the above statement of law to be correct in many decisions among which we cite the following:

United States Fidelity & Guaranty Co. v. Bray, 225 U.S. 205, 206.

Lion Bonding & Surety Co. v. Karatz, 262 U.S. 640, 642.

Isaacs v. Hobbs Tie & Timber Co., 282 U.S. 734, 739.

Straton v. New, 283 U.S. 318-332.

Ex Parte Baldwin, 291 U.S. 610, 619.

Gross v. Irving Trust Co., 289 U.S. 342, 345.

Bryan v. Bernheimer, 181 U.S. 191, 193.

In re Watts & Sachs, 190 U.S. 1, 27.

Also see the following cases:

In re Crosby Stores, 63 Fed. 2nd 812, 814.

In re Diamond's Estate, 259 Fed. 70, 75; Certiorari Denied 249 U.S. 614.

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In re Conservative Mortgage & Guaranty Co., 24 Fed. 2nd 38, 40.

Bank of Andrews v. Gudger, 212 Fed. 49, 55.

Moore v. Scott, 55 Fed. 2nd 863.

State of Missouri v. Angle, 236 Fed. 644, 653.

Hanna, et al. v. Brictson Mfg. Co. et al., 62 Fed. 2nd 139, 150.

At the time of filing the bankruptcy petition herein, the entire property of the bankrupt was intact in the hands of the receiver in the State Court. No application for distribution of any of this property had then been made by the appellants and no order distributing any of the property had been made. It is not true, as stated by appellants, that the State Court claimed jurisdiction to the extent only of compensating its receiver and his employees for services performed prior to the filing of the bankruptcy petition as the order of the State Court shows on its face that employees of the receiver were to be paid for services to be rendered by them after the making of the order, in that the court ordered employees to be paid for services up to February 15th, which was two days after the making of the order and no attempt was made by the court to limit compensation awarded by it to services performed prior to the filing of the bankruptcy petition. If the State Court and the Bankruptcy Court were not courts of concurrent jurisdiction, then, it was not possible for both courts to have possession of the estate of the bankrupt at the same time. The possession of the State Court had to end before the possession of the Bankruptcy Court could begin. It has long been held that the possession of a trustee in bankruptcy dates from the time of the filing of the petition in bankruptcy and that the trustee has constructive possession of all property which the bankrupt had and claimed title to on that date or which was held for him by others. It is not a practical proposition to say that the receiver of a State Court is not an adverse holder of an undetermined and undivided portion of an estate in his hands and is at the same time an adverse holder to another undetermined and undivided portion of the same estate. If he is an adverse holder of any substantial portion of an estate which portion is at the time undetermined and undivided, he is necessarily an adverse holder of the entire estate for it cannot be told until the State Court acts in the premises what portion, if any, will be relinquished to the custody of the Bankruptcy Court. Under these circumstances the so-called paramount jurisdiction of the Bankruptcy Court would

be a mere shadow without substance and jurisdiction to deal with the property would rest solely in the State Court until, by its own order it had decided what portion, if any, to turn over to the Bankruptcy Court. A Bankruptcy Court cannot administer an estate which is partly in its hands and partly in the hands of some other court. Complete and exclusive jurisdiction is exclusive.

This court in Taubel-Scott-Kitzmiller Co. vs. Fox, 264 U.S. 426, succintly stated the rule as follows:

> "The possession, which was thus essential to jurisdiction, need not be actual. Constructive possession is sufficient. It (constructive possession) exits where the property was in the physical possession of the debtor at the time of the filing of the petition in bankruptcy, . . . where the property is in the hands of the bankrupt's agent or bailee; where the property is held by some other person who makes no claim to it."

An examination of the entire record of the proceedings in the State Court shows that they were purely insolvency proceedings begun by unsecured, single contract creditors for the sole and only purpose of winding up an insolvent corporation and distributing its assets among its creditors. No party to the proceedings claimed any special interest in or lien on its assets. The possession of the receiver in the State Court was therefore the possession of the Parks Dry Goods Company, the defendant in the proceedings, and was not in any sense adverse to it.

That the State Court had no jurisdiction to make the order under which appellants claim is not open to question since the decision of this Court in Gross v. Irving Trust Co., 289 U.S. 342, 345.

THE APPELLANTS' CLAIM TO THE FUNDS IN QUESTION WAS MERELY COLORABLE.

The Bankruptcy Court had the right to consider and

decide the question of its own jurisdiction, and if the claim of the person holding the property is colorable only, the Court has jurisdiction to proceed in a summary manner. Taubel-Scott-Kitzmiller Co. v. Fox, *supra*. May v. Henderson, 268 U.S. 111, 116.

The Referee expressly found that the claim of the appellants to the funds withheld by them was colorable only, and his finding was affirmed by the District Court on review. It is agreed that no disputed question of fact was involved in the controversy between appellants and appellee. The exact and precise character of the possession of the appellants to the property involved was presented to the trial court without dispute. It only remained for the Court to determine whether, under the law, the facts justified the appellants in withholding the property. The case of Gamble v. Daniel, 39 Fed. 2nd 447, 455 (C.C.A. 8th) is in point. As above pointed out, since the decision of this Court in Gross v. Irving Trust Co., *supra*, the law is settled that the State Court had no jurisdiction to make the orders under which the appellants claim the funds in dispute. We think that this decision stated the rule as it was theretofore generally applied in Courts of the United States throughout the Union. If any decision to the contrary is to be found in any of the Circuit Courts of Appeal, the diligence of counsel for appellants has not brought it to light. The case of Lion Bonding & Surety Co. v. Karatz, 262 U.S. 640, 642, was decided by this Court in 1923 and in that case the court said:

> "Even where the Court which appoints a Receiver had jurisdiction at the time, but loses it, as upon supervening bankruptcy, the first court cannot thereafter make an allowance for his expenses and compensation. He must apply to the bankruptcy court."

The above decision was written eight years before the appellants applied to the State Court for an allowance for their compensation. Under these circumstances, we respectfully submit that it cannot be said that the

right of the State Court to make the allowances involved in this case was in doubt, as a matter of law, at the time appellants filed their application for compensation in said Court. It follows that, neither the facts nor the law with reference to appellants' claim being open to doubt, their claims were colorable only and were properly adjudicated in summary proceedings.

Since, under the decision of this Court in Gross v. Irving Trust Company, *supra*, the State Court has no right or jurisdiction to fix or allow compensation to appellants in this case after bankruptcy has supervened, if this Court shall hold that appellants cannot be proceeded against summarily but must be sued in a plenary action, an interesting situation will confront us. There is no provision of the Bankruptcy Act or other federal statute under which they could be sued in a Court of Bankruptcy or United States District Court. If the State Chancery Court which made the original allowance had no jurisdiction to make it on motion of the appellants, then it would have no right or jurisdiction to entertain an action which would necessarily involve a finding of the amount due, on application of the Trustee. This would leave the State Circuit Court as the only forum open to the Trustee, and this by a trial before a jury. If, on the other hand, we assume that the decision of this Court in Gross v. Irving Trust Co., means that, while a State Court may not make an allowance for compensation to its Receivers after bankruptcy supervenes, it does have jurisdiction to entertain a motion by the Trustee in Bankruptcy to require its Receiver to turn over ALL of the property in his hands to the Trustee, and as an incident to such jurisdiction may inquire into and determine the amount of property in its hands and as to whether or not all of the estate has been delivered to the Trustee, such a construction does not aid the appellants' case. The only facts open to inquiry in the State Court in such case have been settled by the admissions on the record by the appellants. They admit and agree that they are withholding the sums claimed by the appellee and that said funds came into their

hands as part of the estate of the Parks Dry Goods Company, the bankrupt. If the appellants denied that the funds in question ever belonged to the Parks Dry Goods Company or that they came into their possession by virtue of the Receivership, and such claim or claims were apparently made in good faith, their claim would not be colorable only, and would have to be adjudicated through plenary proceedings. However, since appellants admit the only facts which the State Court in plenary proceedings could possibly have jurisdiction to establish and determine as a basis for a judgment against appellants, their claim to the property loses all substance and becomes colorable only. The appellants are in no position to ask this Court to grant them the right to defend a plenary suit for these funds when, by their own evidence and admissions in this Court and in all of the other Courts through which this action has found its way, there is no law or decision of any court which would justify the State Court in deciding the case in their favor. As above stated, a plenary suit for the recovery of this money against appellants could only mean a suit in the State Chancery Court which originally awarded it to them, as there is no jurisdiction for such an action in any federal court. It must be assumed that the State Court would follow the decision of this Court in Gross v. Irving Trust Co., and in such case the inevitable result would be an order to turn the property over to the appellee as Trustee, the State Court lacking jurisdiction to make any other order if, indeed, it has any jurisdiction at all in the premises.

In their response to the trustee's application for a summary order the only claim that appellants made to the funds withheld by them was based upon the allowance of compensation made to them by the State Court after bankruptcy had supervened. Since it is not open to question that the State Court had no jurisdiction to make this order, and, since the appellants are making no other claim to this money, no better illustration of a claim which is colorable only, and without substantial basis in law or in fact could hardly be found. Appellants are

naked holders of the property under an order of a State Court which is voided for want of jurisdiction.

ALL PROCEEDINGS IN THE STATE COURT WERE VOID FOR WANT OF JURISDICTION IN THAT THE SOLE JURISDICTION OF THE STATE COURT WAS DERIVED FROM A STATE INSOLVENCY ACT WHICH HAD BEEN SUSPENDED BY THE PASSAGE OF THE NATIONAL BANKRUPTCY ACT.

The jurisdiction of the State Court was derived solely from Sub-division 7 of Chapter 38 of the Digest of the Statutes of Arkansas, which Sub-division is as follows:

"INSOLVENT CORPORATIONS

Preferences forbidden. No preferences shall be allowed among the creditors of insolvent corporations, except for the wages and salaries of laborers and employees. Act April 14, 1893, 1 p. 345.

Procedure. Any creditor or stockholder of any insolvent corporation may institute proceedings in the chancery court for the winding up of the affairs of such corporations, and upon such application the court shall take charge of all the assets of such corporation and distribute them equally among the creditors after paying the wages and salaries due laborers and employees. Id., 2.

Preferences set aside. Every preference obtained or sought to be obtained by any creditor of such corporation, whether by attachments, confession of judgment or otherwise, and every preference sought to be given by such corporation to any of its creditors, in contemplation of insolvency, shall be set aside by the chancery court, and such creditor shall be required to relinquish his preference and accept his pro rata share in the distribution of the assets of such corporation; provided, no such preference shall be set aside unless complaint thereof be made within ninety days after the same is given or sought to be obtained. Id., 3.

Notice to creditors. When any chancery court shall obtain jurisdiction of any such insolvent corporations under the provisions of this act, it shall direct notice to be given to all the creditors of such corporations to present their claims within ninety days thereafter, for the purpose of sharing in the assets of such corporation. Id., 4."

The Legislature of Arkansas, by Act No. 250 of the Acts of Arkansas, 1927, page 854, provided as follows:

"Section 39. Dissolved Corporations; Receivers for, How Appointed; Powers.—When any corporation organized under this act shall be dissolved or cease to exist in any manner whatever, the Chancery Court on application of any creditor or stockholder of such corporation, at any time, may either continue such directors, trustees as aforesaid or appoint one or more persons to be receivers of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with powers to prosecute and defend, in the name of the corporation or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being that may be necessary for the final settlement of the unfinished business of the corporation; if in being that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such trustees or receivers may be continued as long as the Chancery Court shall think necessary for the purposes aforesaid.

Section 40. Jurisdiction of Chancery Court.—The Chancery Court shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

Section 41. Trustees or Receivers; Duties of.—The said trustees or receivers after payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, shall pay the other debts due from the corporation, if the funds in their hands shall be sufficient

therefor, and if not, they shall distribute the same ratably among all of the creditors who shall prove their debts in the manner that shall be directed by an order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of such debts and necessary expenses (or the making of adequate provisions thereof), they shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders of the corporation, or their legal representatives.

In case of dissolution, upon the appointment of receiver or trustee, when the corporation is insolvent, the proceeds realized from the estate shall be paid according to the following priorities:

1. The expenses of the proceedings or winding up of the corporation.

2. Any debt due the United States or State and not otherwise secured, including taxes.

3. Wages due to employees, other than officers of the corporation, for not exceeding two months prior to the proceedings to wind up the corporation, and not exceeding Three Hundred ($300.00) Dollars."

It is not believed by counsel that the above statute has any application in this case for the reason that its application is limited strictly to cases arising upon dissolution of a corporation by the voluntary action of its stockholders or through any other cause recognized by law. The dissolution of the Parks Dry Goods Company was not involved in the proceedings of the State Court in this case. If the court is of the opinion, however, that the State Chancery Court might have acted by authority of the above statute, the situation remains the same as a matter of law. It is now well settled that the purpose of Congress to establish uniformity necessarily excludes state regulation and that states may not pass or enforce laws to interfere with or complement the Bankruptcy Act, or to provide additional or auxiliary regulations."

International Shoe Co. v. Pinkus, 278 U.S. 261, 268.

Boese v. King, 108 U.S. 379.

Prigg v. Pennsylvania, 16 Peters 539, 617, 618.

Northern Pac. Ry. Co. v. Washington, 222 U.S. 370, 378 et seq.

St. L. Iron Mtn. & S. Ry. Co. v. Edwards, 227 U.S. 265.

Erie Ry. Co. v. New York, 233 U.S. 671, 681 et seq.

New York C. R. Co. v. Winfield, 244 U.S. 147, 150, et seq.

Oregon-Washington R. & Nav. Co. v. Washington, 270 U.S. 87, 101.

It is hardly necessary to go into detail to show that the State Court acted under a state insolvency act which was intended to act upon the same subjects and to cover the same field and to afford the same character of relief as the National Bankruptcy Act. The jurisdiction of the State Court is founded upon the insolvency of the corporation; a receiver is provided for to perform the same duties as the trustee in bankruptcy; claims are required to be filed with the court within a specified time; notice is required to be given to creditors and the estate is to be distributed in accordance with priorities fixed by the statute and which priorities are entirely different from the uniform system established by Congress and set forth in the National Bankruptcy Act. It is true that no discharge is provided for by the State law, but as this statute operates upon corporations only, this omission is unimportant and a discharge is unnecessary. The dissolution of a corporation is, of itself, an absolute and effective discharge from all further liability for its debts if all of the assets of the corporation are at the same time distributed to its creditors. There can be no further liability on the part of a corporation which no longer exists.

The petition filed in the State Court for appointment of a Receiver shows on its face that the defendant Parks Dry Goods Company was amenable to the terms of the National Bankruptcy Act. It was shown to be a business corporation and not of the class of corporations

not within the purview of the Act; it was insolvent and owed debts of more than $1000.00 in amount.

AFFIRMANCE IN THIS CASE IS NECESSARY FOR THE PROMPT AND EXPEDITIOUS ADMINISTRATION OF BANKRUPTCY ESTATES UNDER THE CIRCUMSTANCES SHOWN IN THIS RECORD.

The prompt and expeditious administration of estates is one of the principal aims of the National Bankruptcy Act. It is best accomplished by concentrating the administration of an estate in one court. This idea is expressed by the decisions of this Court in Isaac v. Hobbs Tie & Timber Co., 282 U.S. 734, 739, and Stratton v. New, 283 U.S. 318, as well as the Rules in Bankruptcy recently promulgated by the Court. If a receiver of a State Court appointed in insolvency proceedings within four months of bankruptcy can demand the filing, trial and final judgment of a plenary action before turning over the estate in his hands, a serious delay may, and in many cases will, interfere with the administration of the estate in the Bankruptcy Court. A plenary action means an action filed in the State Court by the Trustee in bankruptcy, as there is no federal statute under which such a suit may be filed in a federal court. In a great many counties in Arkansas the Chancery Court is in session but twice a year and these terms last for only two or three days each. The Receiver's answer is not due under our Statutes until the first day of the next term and if the Trustee is so fortunate to secure a hearing of the case upon the merits at this first term and a final judgment in his favor, he has still been put to the expense of hiring a lawyer and to a delay of from one to six months. From any order the court may make the right of appeal exists. It may be taken that the average time consumed in appealing a case to the Supreme Court of Arkansas and securing a final decision is about one year. During all of this time the Bankruptcy Court could only helplessly await the delivery of the estate to it at the final outcome of the plenary action.

Receivership cases in the State Courts under our Insolvency Statute are frequently, and we might say usually, of the character usually called "friendly proceedings." The proceedings in this case fall within that class. Beyond entering its appearance on the record in the State Court, the defendant Parks Dry Goods Company never thereafter took the slightest interest in the proceedings. When the appellants presented their application for compensation and the same was allowed by the State Court on the same day it was filed, no person or party whose interests were adverse to the allowances made was present either in person or as a party to the action. The unsecured creditors who were plaintiffs in the action were represented by one of the appellants who was himself a petitioner before the court for the allowance of the funds involved, both for himself and for his client, the Receiver. Under these circumstances it cannot be said that the plaintiffs in the case appeared as adversaries to the allowances made by the Court.

We believe it to be a self-evident fact that property rights of this magnitude should not be disposed of in proceedings of this character. To say that the Trustee, after his appointment, has the right of appeal from any order made by the State Court affords little aid or comfort to the creditors of the estate. As heretofore pointed out, appeals are slow; they are expensive and the disposition of creditors, who each have only a small interest in an estate as a rule, will be to submit to the injustice wrought in these friendly proceedings rather than incur the expense and delay of an appeal.

To require a State Court Receiver to turn over the entire estate in his hands without waiting for the slow and expensive process of a plenary suit to grind its grist, involves no possible injustice to him or to his employees. His lien upon the property turned over for his compensation and expenses is recognized and enforced by the Bankruptcy Court and the proceedings in that Court for the determination of amounts due and ordering payment are simple, fair and expeditious. No costs are

required to be paid either in proceedings before the referee or before the Court on review.

All of the cases cited by appellants involve common law assignments for benefit of creditors and do not touch upon insolvency proceedings in State Courts. This Court has uniformly drawn a clear line of distinction between these two classes of cases and has given its approval to the time-honored custom of distributing the estate of insolvents by means of assignments for the benefit of creditors, but this Court has with equal consistency denied the right of the states to set up and administer their own peculiar systems of bankruptcy while the National Bankruptcy Act is in force.

International Shoe Co. v. Pinkus, 278 U.S. 261, 268.

Fidelity-Philadelphia Trust Co. v. Philadelphia-Girard National Bank, 33 Fed. 2nd 649.

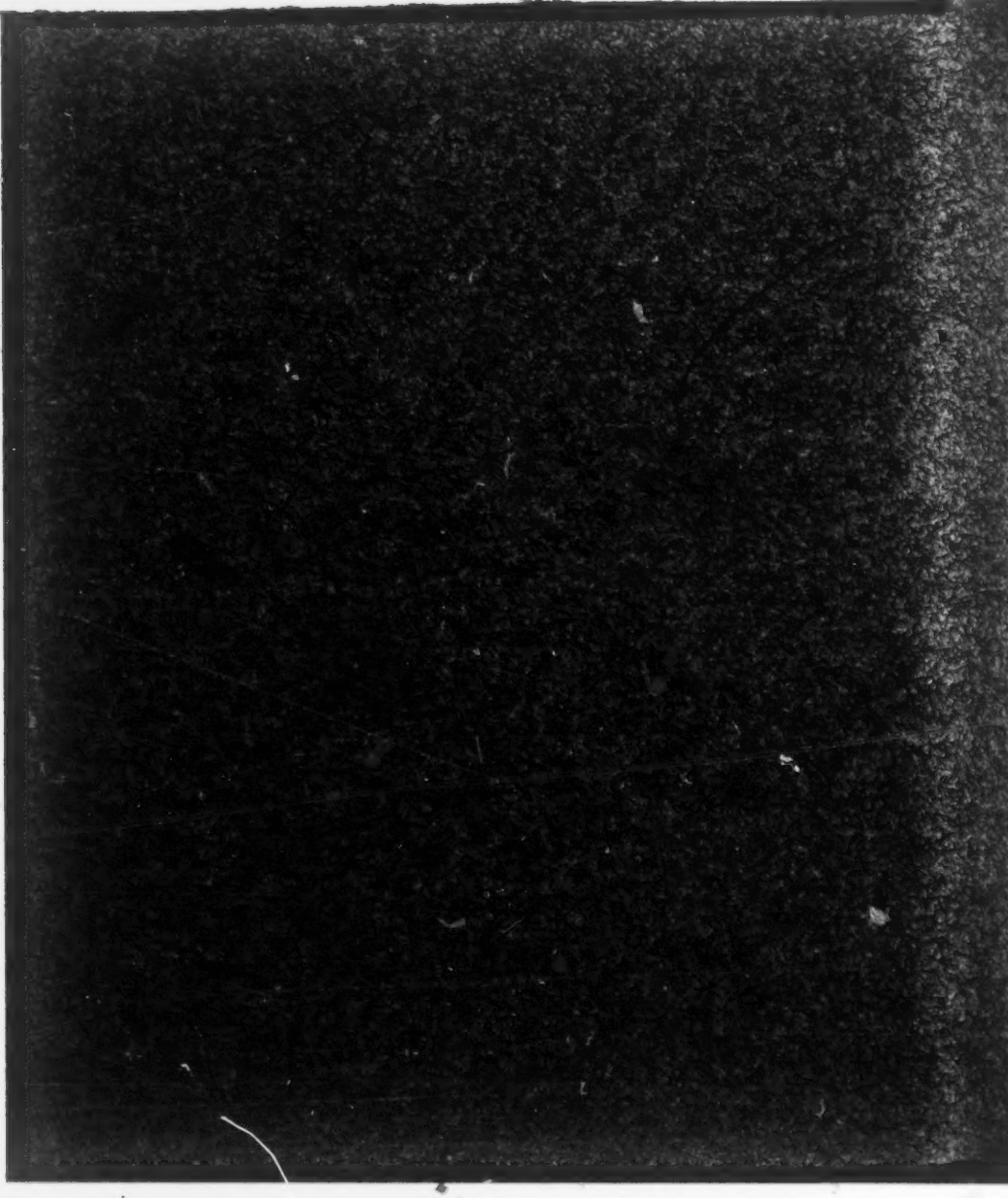
Johnson v. Star, 287 U.S. 527.

Pobreslo v. Boyd Co., 287 U.S. 518, 526.

For the reasons stated, appellee respectfully submits the decision of the Circuit Court of Appeals in the premises is right and ought to be affirmed.

CLINTON R. BARRY,
Attorney for Respondent.

OPINION



SUPREME COURT OF THE UNITED STATES.

Nos. 261 and 262.—October Term, 1934.

S. A. Taylor, Petitioner,
261 *vs.*
Henry Sternberg, Trustee in Bankruptcy for Parks Dry Goods Company, Bankrupt.

John R. Duty, Petitioner,
262 *vs.*
Henry Sternberg, Trustee in Bankruptcy for Parks Dry Goods Company, Bankrupt.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[January 7, 1935.]

Mr. Justice Sutherland delivered the opinion of the Court.

These cases, depending upon the same facts, present the same question. On January 10, 1931, in an insolvency proceeding, Taylor was appointed by a state chancery court in Arkansas receiver of the Parks Dry Goods Company, and Duty as his attorney. On February 11th, a month later, a petition in bankruptcy against the corporation was filed in the federal district court having jurisdiction. Two days later, the corporation was adjudicated a bankrupt. On the same day, the chancery court allowed Taylor compensation as receiver in the sum of $1500, and Duty compensation as attorney in the sum of $500. The receiver turned over the estate to the trustee with the exception of these sums, which petitioners refused to deliver. The trustee applied for a summary order upon petitioners, directing them to turn over to him the sums thus withheld. The referee granted the trustee's application, which the district court, sitting in bankruptcy, affirmed; and this, in turn, was affirmed upon appeal by the circuit court of appeals. 71 F. (2d) 157. Upon these facts, the question presented is whether the bankruptcy court had authority to compel the turn-over by

summary proceeding and order, or whether petitioners were adverse claimants so that a plenary action was required.

Upon adjudication in bankruptcy, all the property of the bankrupt vests in the trustee as of the date of the filing of the petition. Upon such filing, the jurisdiction of the bankruptcy court becomes paramount and exclusive; and thereafter that court's possession and control of the estate cannot be affected by proceedings in other courts, whether state or federal. *Gross* v. *Irving Trust Co.*, 289 U. S. 342, 344; *Acme Harvester Co.* v. *Beekman Lum. Co.*, 222 U. S. 300, 307; *In re Diamond's Estate*, 259 Fed. 70, 73. This applies while the possession is constructive as well as when it becomes actual. *Mueller* v. *Nugent*, 184 U. S. 1, 14; *Taubel-Scott-Kitzmiller Co.* v. *Fox*, 264 U. S. 426, 432-433; *Orinoco Iron Co.* v. *Metzel*, 230 Fed. 40, 44-45, and cases cited.

The status of a receiver is unlike, for example, that of an assignee for the benefit of creditors. The receiver is an officer of the court which appoints him. *Stuart* v. *Boulware*, 133 U. S. 78, 81. The property in his hands is not, in a legal sense, in his possession. It is in the possession of the court, whose appointee he is, by him as its officer. *Thompson* v. *Phenix Ins. Co.*, 136 U. S. 287, 297; *Fosdick* v. *Schall*, 99 U. S. 235, 251. In the present case, with the supervening bankruptcy, the possession of the state court came to an end, and that of the bankruptcy court immediately attached. This result was binding upon the state court and equally binding upon the receiver as custodian for that court. Before the petition in bankruptcy was filed, the receiver's compensation as well as that of his counsel were matters wholly within the control of the state court. *Stuart* v. *Boulware, supra*, at p. 81-2; High on Receivers, 4th ed., § 781. But with the filing of the petition in bankruptcy, the power of the state court in that respect ceased; and its order fixing the compensation of the receiver and his counsel was a nullity because made without jurisdiction, such jurisdiction then having passed to the bankruptcy court. *Gross* v. *Irving Trust Co., supra.*

Since the order of the state court was the sole foundation for their claims and that was void, petitioners had no more right to the sums subtracted or to be subtracted from the estate than they had to the remainder of the estate. That estate, including such sums, was still *in custodia legis*—only the possession had passed automatically from the state court to the bankruptcy court. There-

after, the estate in its entirety was held by the receiver as a mere repository for the bankruptcy court and, therefore, not adversely; and petitioners, in respect of that part of it erroneously awarded as compensation, were in no sense adverse claimants. Their claims were colorable only and subject to the summary power of the bankruptcy court. *In re Watts and Sachs,* 190 U. S. 1, 27; *In re Diamond's Estate, supra,* at p. 74; *Moore* v. *Scott,* 55 F. (2d) 863; *Bank of Andrews* v. *Gudger,* 212 Fed. 49; *In re Crosby Stores, Inc.,* 61 F. (2d) 812, 814.

Cases dealing with assignments, like *Louisville Trust Co.* v. *Comingor,* 184 U. S. 18, cited by petitioners, in no way militate against this conclusion. The situation presented in each of those cases substantially differs from that presented here. See *May* v. *Henderson,* 268 U. S. 111, 115-6; *In re Louis Neuburger, Inc.,* 233 Fed. 701, *aff'd* 240 Fed. 947. Moreover, the status of a receiver and that of an assignee, as already sufficiently appears, is essentially different.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.